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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91204897
Party	Plaintiff John G. Marino
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Date	10/11/2013
Attachments	Marino Motion to Compel Corp Rep Depo.pdf(110032 bytes) nod4.pdf(28468 bytes) P Tardiff.pdf(730668 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

**In the matter of trademark application Serial No. 85411955
For the mark LAGUNA LAKES Published in the Official Gazette on
February 28, 2012**

Consolidated Opposition No:

91204897

91204941

JOHN GERARD MARINO

v.

LAGUNA LAKES COMMUNITY ASSOCIATION, INC.

**JOHN GERARD MARINO'S
MOTION FOR TO COMPEL
DEPOSITION OF PROPER CORPORATE REPRESENTATIVE
OR DONNA FLAMMANG, ESQ. AND FOR SANCTIONS**

John Gerard Marino ("Marino"), by and through his undersigned counsel hereby moves this Court to compel a proper corporate representative deposition in this matter, or deposition of Donna Flammang, Esq. in this matter and states as follows:

1. On or about April 2013, Marino set the deposition of Donna Flammang, Esq., the attorney responsible for the applications for the subject trademarks who was also the President of the Laguna Lakes Community Association ("LLCA") Board during the time of the subject trademark applications. On or about April 12, 2013, LLCA filed a Motion to Quash

(D.E. 30) the deposition of Donna Flammang. On April 25, 2013, this Tribunal granted the Motion to Quash, ordering that the information sought from Flammang could be sought through other sources first including a 30(b)(6) deposition of LLCA. (D.E. 32).

2. On August 16, 2013, Marino noticed the depositions of several LLCA Board Members and the 30(b)(6) representative with the most knowledge of the following topics:

1. The first use of the marks applied for with the USPTO.
2. The information contained on the application to the USPTO.
3. The use of the sought trademark in interstate commerce.
4. The reason for seeking the marks.
5. Marino's use of the marks or name Laguna Lakes or Mr. Laguna Lakes.
6. Whether any transfer of the marks was ever made by Transeastern Homes or any TOUSA entity.
7. Any likelihood of confusion between the marks of Laguna and Marino.
8. Whether the sought marks is geographically descriptive.
9. The use of the sought marks by other entities in the U.S.
10. Any profits earned by Laguna by the use of the sought marks.
11. Person with the most knowledge of documents responsive to the Request for Production.
12. Person with most knowledge of the answers to interrogatories.

13. Person with the most knowledge of responses to Request for Admissions

See, attached Exhibit "A."

3. On August 23, 2013, the deposition was taken of the 30(b)(6) representative, Patrick Tardiff. ("Tardiff"). A copy of the subject deposition has been attached hereto as Exhibit "B." ("Tardiff Transcript"). As can be seen from the transcript of the deposition, Tardiff had no knowledge of categories 1, 2 or 6.

4. Tardiff did not have knowledge as to categories 1 or 6 of Exhibit A to the 30(b)(6) Notice. *See* Tardiff deposition at Pages 81-88, 89.

5. Tardiff did not have knowledge as to category 2 of Exhibit A to the 30(b)(6) Notice. *See* Tardiff deposition at Pages 109-112, 115-116, 119, 120-121.123-125. In fact, when asked about the trademark applications, Tardiff testified that Flammang would be the person with the most knowledge of the issues asked. *Id.*

6. Based upon the foregoing, LLCA should be required to produce Donna Flammang, Esq. for deposition. Ms. Flammang, who hoisted herself into this conflict of interest, should no longer be able to hide herself from being subject to deposition in this matter. Alternatively, LLCA should be compelled to produce another 30(b)(6) deponent with knowledge of subject areas 1, 2 and 6.

7. Based upon the eve of the trial period in this matter, Marino faces himself in a position where he still does not have complete discovery. As a sanction, the tribunal should prohibit LLCA from introducing any witness testimony relating to categories 1,2 or 6 at the trial of this matter.

WHEREFORE, Marino seeks an Order compelling the deposition of a

proper corporate representative or for the deposition of Donna Flammang, Esq. and for sanctions as well as any other relief this Court deems just and proper under the circumstances.

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished by electronic mail on this 9 day of October 2013 to: Donna M. Flammang, Esq., Brennan Manna & Diamond, P.L., 3301 Bonita Beach

Road, Suite 100, Bonita Springs, FL 34134.

BEHREN LAW FIRM

2893 Executive Park Drive Suite 110

Weston, FL 33331

(954) 636-3802

scott@behrenlaw.com

By:/ Scott M. Behren/

Scott M. Behren

Fla. Bar 987786

UNITED STATES PATENT AND TRADEMARK
OFFICE-Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Opposition No: 91204897
Opposition No: 91204941

JOHN G. MARINO

vs.

LAGUNA LAKES COMMUNITY
ASSOCIATION, INC.

_____ /

RE-NOTICE OF TAKING DEPOSITIONS

PLEASE TAKE NOTICE that the undersigned will take the deposition of:

<u>Name</u>	<u>Date</u>	<u>Time</u>
Corporate Rep of Laguna Lakes Community Association, Inc. With the Most Knowledge of all Complaints Answers, and Affirmative Defenses and all issues on the Attached Exhibit "A"	August 23, 2013	10:00 a.m.
Patrick Tardiff		1:00 p.m.
Jeff Kelly		2:00 p.m.
Mary Ann Cowart		3:00 p.m.
Bob Hajicek		4:00 p.m.

upon oral examination before an officer qualified to administer oaths at the offices of Von Ahn Associates Court Reporting, 13241 University Drive, Suite 104, Ft. Myers, FL 33907 for the above-styled cause. The deposition shall be conducted pursuant to local rules and shall continue day to day, weekends and holidays excepted, until completed.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was e-mailed this 16 day of August 2013 to: Chad Rothschild, Esq. and Donna Flammig, Esq., Brennan, Manna & Diamond, LLC, 75 East Market St. | Akron, OH 44308.

Behren Law Firm
2893 Executive Park Drive, Suite 110
Weston, FL 33331
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By: / Scott M. Behren/
Scott M. Behren
Fla. Bar No. 987786

Exhibit "A"

1. The first use of the marks applied for with the USPTO.
2. The information contained on the application to the USPTO.
3. The use of the sought trademark in interstate commerce.
4. The reason for seeking the marks.
5. Marino's use of the marks or name Laguna Lakes or Mr. Laguna Lakes.
6. Whether any transfer of the marks was ever made by Transeastern Homes or any TOUSA entity.
7. Any likelihood of confusion between the marks of Laguna and Marino.
8. Whether the sought marks is geographically descriptive.
9. The use of the sought marks by other entities in the U.S.
10. Any profits earned by Laguna by the use of the sought marks.
11. Person with the most knowledge of documents responsive to the Request for Production.
12. Person with most knowledge of the answers to interrogatories.
13. Person with the most knowledge of responses to Request for Admissions.

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
Post Office Box 1451
Alexandria, Virginia 22313-1451

JOHN G. MARINO,

vs.

OPPOSITION NO. 91204897
OPPOSITION NO. 91204941

LAGUNA LAKES COMMUNITY ASSOCIATION, INC.,

DEPOSITION OF: PATRICK TARDIFF
(As Corporate Representative and
Individually)

DATE TAKEN: August 23, 2013

TIME: 10:16 a.m. to 2:35 p.m.

LOCATION: Von Ahn Associates, Inc.
13241 University Drive
Suite 104
Fort Myers, Florida

BEHALF OF: The Plaintiff

REPORTED BY: Marianne E. Sayers, RPR, CRR,
Court Reporter and Notary Public
State of Florida

VON AHN ASSOCIATES, INC.
Registered Professional Reporters
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1 APPEARANCES:

2

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3

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6

By: Scott M. Behren, Esquire

7

For the Defendant(s):

8

BRENNAN, MANNA & DIAMOND
3301 Bonita Beach Road
Suite 100
Bonita Springs, Florida 34134

10

11

By: Richard S. Annunziata, Esquire

12

For the Defendant(s): (Via Conference Phone)

13

BRENNAN, MANNA & DIAMOND
75 East Market Street
Akron, Ohio 44308

14

15

By: W. Scott Harders, Esquire
Chad Rothschild, Esquire

16

17

18 ALSO PRESENT: John G. Marino

19

20

21

I N D E X

22

ATTORNEY	DIRECT	CROSS	REDIRECT	RECROSS
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23

MR. BEHREN	6
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24

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1 MR. BEHREN: We have a corporate
2 representative deposition that's scheduled to
3 start at 10:00 a.m. this morning. It's 10:15.
4 Everybody's here, we are ready to get started.
5 However, at ten o'clock last night, apparently for
6 the first time, counsel in Ohio decided, even
7 though they have a partner here present in person,
8 that they need to have electronic versions of the
9 exhibits. The first time they requested them was
10 approximately ten o'clock last night, even though
11 we were with them in depositions all day.

12 So, my client is making an effort to see
13 whether or not these things can be sent to them in
14 electronic version here at the last moment, and
15 we'll see if it's -- if we can do it or not, but
16 we are proceeding as scheduled regardless of
17 whether we can get them the exhibits or not.

18 MR. ANNUNZIATA: For the record, for
19 clarification, this is Richard Annunziata.

20 Lead counsel is Scott Harders in this case
21 and Chad Rothschild, and the -- and also Donna
22 Flammang. I'm here as a courtesy. And while I --
23 it is true I am here in person, lead counsel needs
24 to be advised, informed, of the documentation
25 that's being presented at today's deposition.

1 So, I will leave it to Scott to add anything
2 else with regard to any issues involving his need
3 to see documentation and proceeding if we are not
4 able to send those documentation, but let's wait
5 and see if we -- if we can, in fact, do away with
6 that issue by having them actually sent to
7 Mr. Harders.

8 MR. BEHREN: If lead counsel was so
9 concerned, lead counsel should have been here in
10 person, or, alternatively, they should have said
11 something more than -- earlier than 10:00 p.m. the
12 night before, and I'm sure then that the exhibits
13 could easily have been scanned to them.

14 MR. ANNUNZIATA: From what I understand,
15 this matter has been expedited over the past week
16 and the parties have been working diligently to
17 try to work together.

18 MR. BEHREN: We were with them all day
19 yesterday. What were they waiting for? Why did
20 they first ask at ten o'clock at night?

21 MR. ANNUNZIATA: Okay. We can go back and
22 forth all day long on these kind of comments and
23 gestures, but we are just trying to clarify for
24 the record where we are standing.

25 (Off-the-record discussion.)

1 (A recess was taken from 10:19 a.m. to 10:55
2 a.m.)

3 Thereupon,

4 PATRICK TARDIFF,

5 a witness, called by counsel for Plaintiff, having
6 been first duly sworn by the court reporter, was
7 examined and testified as follows:

8 THE WITNESS: I do.

9 DIRECT EXAMINATION

10 BY MR. BEHREN:

11 Q Would you state your name for me, please?

12 A Patrick Tardiff.

13 Q And that's spelled T-A-R-D-I-F-F?

14 A Correct.

15 Q Okay. Have you ever given a deposition
16 before?

17 A No.

18 Q Well, aren't you the lucky one?

19 Have you ever been a party to a lawsuit
20 before?

21 A Yes.

22 Q Civil, criminal, both, neither?

23 A Civil.

24 Q Personally?

25 A Yes.

1 Q What was that about?

2 A Mostly an accident that had occurred. And
3 then there was one that was -- just recently I had an
4 EEOC complaint against me that the -- the plaintiff just
5 blew it off, threw the complaint out there and never
6 returned to say or do anything. He had nothing, so
7 that's why.

8 Q Okay. So, the first you said was an
9 accident, like personal injury?

10 A Personal injury.

11 Q Were you the plaintiff or the defendant?

12 A The plaintiff.

13 Q Was that a case here or -- in Florida, or --

14 A No.

15 Q -- somewhere else?

16 A Somewhere else.

17 Q Where was that?

18 A Jersey.

19 Q Where in Jersey, what exit?

20 A Eighty-two.

21 Q Well, I'm from Jersey, so I have to ask
22 that.

23 A Are you?

24 Q Yeah.

25 A All right.

1 Q Did that settle?

2 A Yes.

3 Q So, it was actually -- there was a lawsuit
4 filed, but you never got around to the stage where there
5 was depositions taken, and --

6 A No.

7 Q -- eventually the case settled?

8 A It just settled out, yeah.

9 Q It was settled before the lawsuit was filed?

10 A Yeah -- no, it settled before -- well, the
11 lawsuit was filed and then pretty much it -- it
12 basically settled.

13 Q Okay. And now the EEOC complaint, was that
14 here, or was that --

15 A Yes, that was here.

16 Q What was the EEOC complaint about? You said
17 somebody made an EEOC complaint about you? I'm assuming
18 it was an employee?

19 A Yeah. Our first clubhouse manager that
20 worked for Alliant Property Management that came in
21 direct contact with me, decided that when he got fired
22 he was going to do whatever he could to get some money,
23 so he turned around and put a complaint against me, and
24 then -- having no basis for anything that was said. And
25 we, as in the board and as in Alliant Property

1 Management, had a book of stuff that -- reasons why he
2 got fired, and that's really why -- just a simple
3 complaint was made, and then he did nothing with it.

4 Q What was his name?

5 A Jose Loventon.

6 Q Lovington?

7 A Loventon.

8 Q Lovington?

9 A Yeah.

10 Q L-O-V-I-N-G-T-O-N?

11 A E-N. L-O-V-E-N-T-O-N.

12 (Off-the-record discussion.)

13 THE WITNESS: L-O-V-E-N-T-O-N.

14 BY MR. BEHREN:

15 Q Loventon?

16 A Yeah.

17 Q L-O-V-E-N-T-E-N?

18 A O-N.

19 Q O-N?

20 A O-N.

21 Q Loventon, all right.

22 A Loventon.

23 Q That was an EEOC complaint that was filed
24 against you or against the association?

25 A It was filed against me, the association,

1 and Alliant Property Management.

2 Q Was he an employee of Alliant, or was he --

3 A Yes.

4 Q -- was he an employee of the association?

5 A Yes, he --

6 Q And let me -- let me give you some tips,
7 some deposition pointers.

8 A Okay.

9 Q All right? Because you haven't done this
10 before.

11 So, when you answer the question, please try
12 to answer in a verbal fashion, yes --

13 A Okay.

14 Q -- no --

15 A Right.

16 Q -- I don't know, something the court
17 reporter can type up; all right?

18 A Okay.

19 Q When I'm asking questions --

20 A Uh-huh.

21 Q -- try to wait until I finish the question.
22 I know that normally when we are talking, it's kind of
23 like having a conversation, we might overlap on each
24 other.

25 A Okay.

1 Q It won't make for a clear record, and she
2 won't be able to necessarily hear everything everybody's
3 saying; all right?

4 A I got you.

5 Q So, if I tell you hold on a second, let me
6 finish the question, I'm not trying to be rude or give
7 you a hard time, I just want to make sure she --

8 A Right.

9 Q -- gets a clear transcript; all right?

10 A Okay.

11 Q And also, if you -- if I ask you a question
12 and you say uh-uh, uh-huh --

13 A Okay.

14 Q -- if I say, is that yes, is that no, again
15 I'm not trying to give you a hard time --

16 A Okay.

17 Q -- I just want to make sure we have a clear
18 transcript; all right?

19 A I understand.

20 Q There may be points in time potentially
21 where your attorney may object to a question. Unless
22 they -- normally, unless they specifically instruct you
23 not to answer the question, you can normally answer the
24 question. Generally they are making some type of an
25 objection to preserve for a later point in time.

1 A Okay.

2 Q All right?

3 A Yep.

4 Q Any other questions at all about the general
5 procedures?

6 A No.

7 Q Okay. Anyway, so this Jose was an employee
8 of Alliant, but then brought an EEOC claim against the
9 association and against you?

10 A Correct.

11 Q Okay. And that actually went through a full
12 investigation? Did they -- did they issue a right to
13 sue letter, do you know?

14 A No, they did not.

15 Q There was no right to sue letter issued?

16 A It went -- it went a year, and the EEOC went
17 back to Mr. Loventon to have him do something with the
18 case, and he did nothing. So, I guess at that point
19 there was a right to sue for ninety days, or something,
20 I -- I --

21 Q Okay.

22 A Yeah.

23 Q Was there a -- did you hire counsel to
24 respond to the EEOC charge?

25 A The D&O insurance picked up the counsel,

1 yes.

2 Q D&O insurance, okay.

3 A Yeah.

4 Q So, it wasn't this particular -- this same
5 law firm, Ms. Flammang's law firm, correct?

6 A No.

7 Q Do you remember who the lawyers were on that
8 case?

9 MR. ROTHSCHILD: Scott, this is Chad
10 Rothschild.

11 I just want to clarify. Are we asking
12 questions of a 30(b)(6) witness?

13 MR. BEHREN: I'm sorry?

14 MR. ROTHSCHILD: Are we asking -- are you
15 asking questions of a 30(b)(6) witness?

16 MR. BEHREN: Well, given the fact that I
17 noticed Mr. Tardiff for his deposition and he's
18 also, I'm assuming -- as I understand it, he has
19 been produced as the corporate rep also, correct?

20 MR. ROTHSCHILD: Right. We just want to
21 know which lines of questions you're going into.

22 MR. BEHREN: Well, I plan on combining
23 Mr. Tardiff and the corporate rep's questions into
24 one deposition, because I don't really see that it
25 makes sense, especially given the fact now that we

1 started an hour late, to --

2 MR. ROTHSCHILD: That's not --

3 MR. BEHREN: -- break down the corporate rep
4 deposition versus Mr. Tardiff's deposition.

5 MR. ROTHSCHILD: That's fine with us. Can
6 you clarify when you're asking questions of him as
7 a 30(b)(6) witness and when you're asking
8 questions of him as an individual?

9 MR. BEHREN: That's fine.

10 MR. ROTHSCHILD: Okay, thank you.

11 BY MR. BEHREN:

12 Q Okay. Anyway, do you remember the -- who
13 the law firm was on that?

14 A I don't remember the name, because I -- I
15 don't remember the name.

16 Q Okay. And so -- and, again, you were never
17 actually sued?

18 A No.

19 Q All right. Any other instances where you
20 have been a party to a lawsuit, civil, criminal --

21 A No.

22 Q -- bankruptcy, anything of that nature?

23 A No.

24 Q Have you ever been arrested or convicted of
25 a crime at all? And, again, I'm not trying to give you

1 a hard time, but these are general questions that we
2 need to ask in deposition.

3 A Is there a time frame on that?

4 Q How about while you were an adult? I'm not
5 really particularly interested in something -- you know,
6 if you were 13 years old, or something like that.

7 A No, but I'm trying to remember. It was 20
8 years ago easily, yeah.

9 Q Was that an arrest, or a --

10 A An arrest.

11 Q -- conviction, or what?

12 A It was an arrest.

13 Q What was it for, generally?

14 A DUI.

15 Q Okay. That was back in Jersey, too?

16 A Yes, it was.

17 Q Okay.

18 A Might even have been 25 years.

19 Q Okay. Any --

20 A I don't remember.

21 Q Anything else?

22 A No.

23 Q All right. And, again -- and I'm
24 assuming -- and you're not under the -- not under the
25 influence today of any drugs --

1 A No.

2 Q -- alcohol, or anything --

3 A No.

4 Q And wait, just --

5 A Go ahead.

6 Q Wait until I finish the question.

7 A Okay.

8 Q And, again, this is not a question to try to

9 harass you. I just --

10 A Yeah.

11 Q -- want to make sure there's nothing that

12 would impede your ability to recall things or answer

13 questions today, correct?

14 A Correct.

15 Q Okay. And you're currently a resident of

16 Laguna Lakes?

17 A Yes, I am.

18 Q What parcel are you in?

19 A Pebble Beach.

20 Q And there's -- there's multiple parcels at

21 Laguna Lakes?

22 A Yes, there is.

23 Q What are the parcels at Laguna Lakes?

24 A Pebble Beach.

25 Q Uh-huh.

1 A Monterey, and Santa Barbara, Beverly Hills.

2 MR. BEHREN: Sorry, I'm just trying to get
3 this thing out of the way here.

4 BY MR. BEHREN:

5 Q How long have you been in Laguna Lakes for,
6 approximately?

7 A Approximately nine years.

8 Q Did you buy new at Laguna Lakes?

9 A Yes, I did.

10 (Off-the-record discussion.)

11 BY MR. BEHREN:

12 Q So, you actually bought this home in Beverly
13 Hills, you -- it was construction --

14 A No, Pebble Beach.

15 Q Excuse me, in Pebble Beach.

16 So, bought it new from who?

17 A Transeastern.

18 Q That was Transeastern Homes?

19 A Yes.

20 Q Brought it preconstruction, or --

21 A No.

22 Q Tell me about how you bought it.

23 A I took a trip down to Florida in October of
24 '03 -- or '04.

25 Q Right.

1 A And eventually made my way into Laguna
2 Lakes. Found a unit, that one didn't work out. Found
3 another unit, that one didn't work out. And then I
4 ended up with this particular unit.

5 Q Okay. And you were living in Toms River at
6 the time?

7 A That's correct.

8 Q Okay. And why did you move from New Jersey
9 down here?

10 A I have a -- severe medical injuries that --
11 I really had to relocate out of the cold, damp weather.

12 Q Okay. When did you first start to serve on
13 the board of Laguna Lakes?

14 A December -- January of 2011.

15 Q All right. And let me show you -- I don't
16 have extra copies of this, but I'm going to refer you
17 over to Laguna Lakes production that they gave us in the
18 case.

19 Here, take a look at -- I'm going to show
20 you first -- the first page here -- some of the stuff
21 looks like it actually maybe came from you.

22 A Uh-huh.

23 MR. ANNUNZIATA: I just want to take a look
24 at it, if I may.

25 MR. BEHREN: It's a -- it's a 175-page file

1 here, but --

2 MR. ANNUNZIATA: All right. Page 1 is
3 just -- are you answering just on page 1, or the
4 whole file?

5 MR. BEHREN: I'm going to go through the
6 whole thing with him.

7 MR. ANNUNZIATA: Okay.

8 UNIDENTIFIED SPEAKER: We have a copy of it.

9 MR. ANNUNZIATA: Yeah, it's LL-1 through --
10 okay, you know what he's talking about. I was
11 just trying to give you a designation so you can
12 follow, that's all.

13 UNIDENTIFIED SPEAKER: We got it. Thank
14 you.

15 MR. ANNUNZIATA: You got it.

16 It's on his iPad, for the record. When I
17 say his, opposing -- Mr. Behren's iPad.

18 BY MR. BEHREN:

19 Q All right. So, looking at LL-1, which is
20 the first page of the production that Laguna Lakes gave
21 us in this case --

22 MR. ANNUNZIATA: The page keeps turning for
23 him.

24 MR. BEHREN: Yeah, it's -- it was produced
25 to me also sideways, but --

1 MR. ANNUNZIATA: Got you.

2 THE WITNESS: Right.

3 BY MR. BEHREN:

4 Q What is that first page there that's stamped
5 LL-1?

6 A That is the sign entranceway of the main
7 gate at Laguna Lakes. There's also a clubhouse picture,
8 front clubhouse picture, the back of the -- of the pool.
9 I believe that's the lake at Monterey Lakes, and a palm
10 tree.

11 It's also the home page of the website.

12 Q All right. What's the website? What's the
13 address of that website?

14 A LagunaLakesCommunityAssociation.com.

15 MR. BEHREN: And just to clarify something
16 else here -- and just for the record, we'll mark
17 the LLCA production, I guess, as Exhibit B, or I'm
18 going to reference to it as Exhibit B.

19 (Deposition Exhibits A and B were marked for
20 identification.)

21 BY MR. BEHREN:

22 Q Let me show you Exhibit A, which is the
23 Re-Notice of Taking Depositions.

24 A Okay.

25 Q And my understanding is that you are being

1 produced here today both as the corporate rep of Laguna
2 Lakes Community Association, Inc. --

3 A That's correct.

4 Q -- with the most knowledge of the issues on
5 attached Exhibit A, and then also individually; is that
6 correct?

7 A To my knowledge, yes.

8 Q Okay. Well, let me ask you this: One of
9 the things I'm -- with regard to Laguna Lakes Community
10 Association, you said it was dot com, correct?

11 A Correct.

12 Q All right. Were you involved at all in
13 creating that webpage or registering that website?

14 A No, I was not.

15 Q Okay. Who was?

16 A I couldn't even tell you.

17 Q Okay.

18 A That was long before I.

19 Q Do you know when it was created?

20 A I don't have an exact date. I would -- I
21 don't have an exact date. It's been a good number of
22 years. I can't -- I can't -- I can't -- I'm trying to
23 recall whether it was from the very beginning or not. I
24 can't -- I can't recall that.

25 Q Okay. So, you would agree, though, that

1 Laguna Lakes Community Association does not use, for
2 their webpage, the domain LagunaLakes.com, correct?

3 A That's correct.

4 Q Do you know why not?

5 A No, I don't.

6 Q Do you know whether that was the domain that
7 was used by Transeastern for the sale of Laguna Lakes
8 back when the community was first started?

9 A No, I do not.

10 Q Do you recall there being any discussions at
11 any board meeting since you have been on the board about
12 acquiring LagunaLakes.com?

13 A Yes, there was. No, not -- LagunaLakes.com,
14 or -- no --

15 Q Okay.

16 A -- not that, not --

17 Q Was there discussion since you have been on
18 the board about acquiring some other domain name for --

19 A Not that --

20 Q -- the association?

21 A I was -- I was taking it in a different
22 direction. Had nothing to do with the domain name. No
23 one ever decided or talked about going with a domain
24 name whatsoever.

25 Q Okay. Do you recall any discussions

1 recently, since you have been on the board, about the
2 Laguna Lakes website?

3 A About the website?

4 Q Yeah.

5 A At a board meeting?

6 Q Yeah. Do you -- since you have been on the
7 board, do you --

8 A Yeah.

9 Q -- recall board meeting discussions about
10 the website? For instance, possibly its content,
11 additions to it, deletions to it, or anything of that
12 nature?

13 A That's not a normal -- it would -- no, I
14 don't believe there was.

15 Q Okay. Just to clarify something else, too,
16 you have been on the Laguna Lakes board since when,
17 approximately?

18 A January 31st of 2011.

19 Q Okay. And since you have been on the board
20 on January 31st, 2011, who has served on the board with
21 you?

22 A The first -- 2011, 2012, was myself, Bob
23 Hajicek, Jeff Kelly, Donna Flammang and --

24 Q Hold on one second. Wait, wait, wait.

25 Bob Hajicek?

1 A Uh-huh.

2 Q Jeff Kelly?

3 A Correct.

4 Q Donna Flammang, uh-huh.

5 A And Mary Ann Cowart.

6 Q Okay.

7 A And then --

8 Q For 2012, '13, did that change?

9 A Yes. In January of 2013, it was myself, Bob
10 Hajicek, Walter Sargent, Fabian Ruiz.

11 Q Hold on one second.

12 Walter Sargent?

13 A Correct.

14 MR. BEHREN: Can you guys -- what are you --
15 are you guys doing something on the line there? I
16 hear like either a car, or a washing machine, or
17 something loud. Can you stop whatever you guys
18 are doing over there, please?

19 UNIDENTIFIED SPEAKER: Not doing any laundry
20 up here, don't worry about that.

21 MR. BEHREN: I know, I figured, but it
22 sounded like a laundry -- like a washing machine.

23 MR. ANNUNZIATA: Actually, it does.

24 MR. HARDERS: Okay. I mean, it might have
25 been when the air conditioning unit just kicked

1 on. That's the only thing I can think of. So,
2 maybe -- maybe we can turn down the sensitivity on
3 the phone.

4 MR. BEHREN: Okay.

5 THE COURT REPORTER: And I don't know who it
6 is speaking on the phone.

7 MR. HARDERS: That was Scott Harders.

8 (Off-the-record discussion.)

9 BY MR. BEHREN:

10 Q So, going back again, so 2013 was -- it was
11 Bob H, yourself?

12 A Uh-huh.

13 Q Walter Sargent, you said?

14 A Correct.

15 Q Who else?

16 A Fabian.

17 Q Fabian?

18 A Ruiz.

19 Q Fabian Ruiz is the name?

20 A Correct.

21 Q Okay.

22 A And Robert Buchanan.

23 Q Okay. And do you know why Mary Ann stopped
24 being on the board?

25 A Yeah.

1 Q Why?

2 A Two years, it was enough.

3 Q I mean, was it --

4 A That was --

5 Q Did she want to be on the board again, or

6 was she --

7 A No.

8 Q -- basically --

9 A No, she had enough.

10 Q -- ejected?

11 A No.

12 Q She'd had enough?

13 A She had enough.

14 Q Okay.

15 A No. If she wanted to be on, she would have

16 been on. Any one of them, if they wanted to stay on,

17 they -- they probably would have been kept on.

18 Q Okay. So, Donna Flammang also, you're

19 saying, she --

20 A No.

21 Q -- it was her voluntary decision to --

22 A Yes.

23 Q -- get off of the board?

24 A Yes.

25 (Off-the-record discussion.)

1 BY MR. BEHREN:

2 Q And same thing -- what about Jeff, same
3 thing, as far as you know, a voluntary decision to get
4 off the board?

5 A Yes.

6 Q Okay. Now, going back to LL-1 here, I guess
7 it has resident log in on the website. What does --
8 what feature does resident log in allow to you do?

9 A As a resident, you could actually log in.

10 Q And do what?

11 A Yeah, access --

12 Q I figured that that's what it meant, but
13 what can you --

14 A Access --

15 Q -- actually do if you log in?

16 A -- to the website.

17 Q What's on the website for residents that's
18 not otherwise available to the public?

19 A Just general information about Laguna,
20 around Laguna, documents for Laguna.

21 Q Okay. Documents such as what?

22 A Meeting minutes would be on there. I'm
23 trying to think of what else.

24 Q Yeah. Again, I'm just trying to figure
25 out --

1 A I know, but I don't take care of the
2 website, and I rarely go on that, to tell you the God's
3 honest truth. So, what exactly is on there as far as
4 documents would go, I -- I'm trying to think, and I
5 can't think of anything else.

6 Q Okay. Online payments, I'm assuming what,
7 that allows to you make --

8 A Yes, it does.

9 Q -- association payments?

10 A Yes.

11 Q Now -- and how does that work? Does -- do
12 each of the residents have to pay to the Laguna Lakes
13 master association and the parcel associations, or is
14 there one payment to Laguna Lakes master that gets then
15 parsed out to the parcel associations?

16 A As of right now, it's one payment to the
17 master, one payment to the parcel. However, in the
18 first couple of years, in the beginning, Pebble Beach
19 used to make one payment and then Pebble Beach would
20 make the payment to the master.

21 Q Any idea why that was changed?

22 A They couldn't -- because you have 236 units
23 in Pebble Beach, condo units. And if one, two, ten, 20,
24 50 of them are not making the payments, Pebble Beach,
25 the association, is still on the hook to the master for

1 that money.

2 Q Uh-huh.

3 A So, all being fair, they made the agreement
4 way back when to just divvy it out.

5 Q Okay.

6 A And it's a good thing for them, because that
7 association would have flushed down the toilet when the
8 crash happened.

9 Q Okay. So that -- the parcel associations
10 then are kind of autonomous from the master association?

11 A That's correct.

12 Q Okay. So, what is the master association
13 responsible for, or administers, versus the parcel
14 association?

15 A How do -- the master takes care of all of
16 the amenities.

17 Q Amenities you mean what, clubhouse?

18 A Clubhouse, the pool, tennis courts,
19 volleyball courts, the building itself.

20 Q The building, you mean where the clubhouse
21 is?

22 A The clubhouse building itself.

23 Q Uh-huh.

24 A There is a fishing pier there, take care of
25 that.

1 We also take care of the front entryway
2 guardhouse and the gates that operate to allow people to
3 enter and exit. There is a back gate, we also operate
4 that.

5 And we also take care of the roads.

6 Q The roads?

7 A Uh-huh.

8 Q The roads within the whole area --

9 A Yeah.

10 Q -- including the parcel associations?

11 A Yes, all -- all of the roadways in Laguna
12 Lakes.

13 Q And what about the parcel association, what
14 do they do? What are --

15 A Well --

16 Q -- they responsible for?

17 A Each parcel would be different. The condos,
18 obviously, are different than everyone else.

19 Q The condos would have more to maintain, I'm
20 assuming --

21 A More --

22 Q -- because it's -- you're talking --

23 A Right.

24 Q -- about common walls, roofs, things of that
25 nature?

1 A (Nodding head affirmatively.)

2 Q What about the non-condo associations?

3 Generally what are the parcel associations responsible
4 for?

5 A The non-condos, I believe that they pay an
6 association fee and -- and that they -- they have their
7 landscaping. I'm not quite certain, because I don't
8 live over there. I -- I tried to stay way away from
9 parcel --

10 Q You live, again, you said in Pebble --

11 A Pebble Beach.

12 Q -- Beach, which are condos?

13 A Correct.

14 Q So, you're not sure what's covered by the
15 parcel association --

16 A No. I'm very sure of what the Pebble Beach
17 is, but not the -- I know that they take care of -- the
18 homes take care of the landscaping --

19 Q On the individual properties.

20 A -- of the individual properties, somewhat
21 down the line.

22 Q Okay.

23 A Pebble Beach is the condo, it's much
24 different. They have -- they take care of the entire
25 building basically. Everything from the Sheetrock out

1 is the association.

2 Q Okay. Does the -- and do each of the
3 parcels, they have signage going into the parcels?

4 A Yes.

5 Q What, the name of whatever the parcel is?

6 A Correct.

7 Q The Laguna Lakes logo on those signs?

8 A I believe they are. I -- that one, I'm not
9 sure, but I believe they are.

10 Q Is the -- the parcel associations are
11 allowed to use the Laguna Lakes logo?

12 A Are the parcel -- I would imagine that --

13 Q Let me ask you this: Did the board, as far
14 as you know, ever complain to any parcel association
15 about them using the Laguna Lakes name or logo?

16 A I can't say that I have that knowledge, no.

17 Q Okay. And who -- as far as you know, who
18 was using the Laguna Lakes name and logo first, the
19 parcel associations or the master association?

20 A I don't know exactly, but I don't know that
21 the parcel associations are actually using the name or
22 logo.

23 Q Well, the logo is on a bunch of the signs
24 for the parcel associations, correct?

25 A I -- again, I'm going off of my memory, and

1 I really specifically can't recall if they are or are
2 not on that -- the signs. They very well could be. I'm
3 trying to imagine it, and I can't be sure.

4 Q Okay. Going back again to LL-1, the website
5 for Laguna Lakes Community Association, we have here
6 request log in, online payments, residents log in,
7 amenities, which I guess sets out what the amenities
8 are.

9 A Uh-huh.

10 Q Homes, condos for sale --

11 A Correct.

12 Q -- what's that link all about?

13 A That's for the residents to list a home or
14 condo that is for sale, so --

15 Q It's supposed to be only residents who are
16 selling on their own?

17 A Correct. No. Residents that have their
18 house for sale can post that on there.

19 Q Whether they have a Realtor or not?

20 A Yes.

21 Q So, it's not only for those who are just
22 selling by owner, it's for anybody who wanted to sell
23 their unit that lives in Laguna Lakes?

24 A To my knowledge, it is. And you -- and
25 you -- and that's the only restriction, is that it has

1 to be a home in Laguna.

2 Q Okay. So, but the association is not
3 actually selling then the homes, the individual
4 association member would be selling the homes and you
5 all are offering the ability to use the website as a
6 benefit to being an association member?

7 A Correct.

8 Q All right. Would that be the same also with
9 regard to the rental tab? This would be, again,
10 individual unit owners who are looking to rent units?

11 A I believe so, yes.

12 Q Okay. And, again, it's not that the -- the
13 association has nothing to do with renting these units,
14 it's just the -- again, an advertising benefit provided
15 to association members?

16 A That is correct.

17 Q Okay. So, via this website, you would agree
18 that Laguna Lakes Community Association is not selling
19 anything, correct?

20 A Correct.

21 Q They are not renting anything, correct?

22 A That's not correct.

23 Q What are they renting?

24 A The clubhouse.

25 Q Okay. So, they rent the clubhouse?

1 A That's correct.

2 Q Okay.

3 A Uh-huh.

4 Q That's not something that they are renting
5 on the website?

6 A I don't -- normally, you would -- if you
7 want to rent the clubhouse, you go to the clubhouse.
8 The clubhouse manager has a sheet that you would have to
9 fill out, put a deposit down, and make the payment, and
10 then that would be it.

11 Q Okay. But that's not something that's --
12 again, that you can do, I guess, via this website,
13 correct?

14 A I -- I -- I'm not -- I -- I don't think you
15 can do it by there. I think there is information about
16 that on --

17 Q About renting it?

18 A About renting it, on the website.

19 Again, I'm not -- I don't frequent the
20 website, so --

21 Q Okay. The next page of the production here,
22 LL-2, which was produced by your attorneys, it says
23 Santa Barbara Collection, Avalon, on the bottom it says
24 Laguna Lakes and has the logo?

25 A Uh-huh.

1 Q What -- do you know what this particular
2 page is?

3 A I would imagine this is from the very
4 beginning of Transeastern having their pamphlets.

5 Q So, you believe this would have been
6 Transeastern material used to sell, I guess, homes in
7 the Santa Barbara parcel?

8 A Yes, I do believe that.

9 Q And Avalon would have been a model in the
10 Santa Barbara parcel?

11 A Yes.

12 Q And then the next page here, Santa Barbara
13 Collection features. And then once again it has the
14 Laguna Lakes, I guess, stylized name here, which is
15 LL-3. This is also Transeastern materials, as far as
16 you know?

17 A As far as I know.

18 Q Okay. And just to clarify, LL-2 and LL-3,
19 these are not materials that were generated or used by
20 the Laguna Lakes Community Association, correct?

21 A That is correct.

22 Q So, just to clarify again, too, the Laguna
23 Lakes Community Association's sole function, as I
24 understand it, would be to collect assessments from
25 members and maintain the various amenities that you just

1 listed for me before, correct?

2 A The main function would be to do that,
3 yes --

4 Q So, there --

5 A -- but there are other functions.

6 Q Such as some level of architectural control,
7 I believe, is in the master declaration, correct?

8 A That's correct.

9 Q Rental -- renters, do they have to also
10 clear with the master association, or is that the parcel
11 association?

12 A No, that's the parcel association. But, as
13 a renter, they are obligated in the documents to make
14 sure that the master board has a copy of the lease
15 before they take occupancy.

16 Q Okay. Anything else that you can think of
17 that the master association is responsible for other
18 than what we have already discussed?

19 A Just trying to keep the -- the assets of the
20 overall community itself safe and good -- safe shape to
21 use, to over --

22 MR. HARDERS: This is Scott Harders. The
23 witness is cutting in and out a little bit. If I
24 could just have you --

25 THE WITNESS: Sit forward?

1 MR. HARDERS: -- to the microphone, or a
2 little louder. It's intermittent.

3 THE WITNESS: Okay, sorry.

4 MR. HARDERS: That's okay.

5 THE WITNESS: Let me see.

6 We would run meetings. Normally it's one
7 month. That's not to say that it would -- it has
8 to be, just that normally that's what it is.

9 We also keep tabs on all the vendors.

10 BY MR. BEHREN:

11 Q What do you mean the vendors? What kind of
12 vendors?

13 A Well, we have landscaping that we have to
14 take care of. We have a pool maintenance, that they
15 have to come in and take care of the pool. Somebody's
16 got to be watching them, to make sure they are doing
17 what they are doing --

18 Q Okay.

19 A -- otherwise --

20 And then they also have to check out the
21 gates. Like I said, we have a firm that takes care of
22 the gates for us, and there's cameras, there's --

23 Q Those aren't guard-manned gates? Those are
24 like -- what are they, like automated gates of some
25 sort?

1 A Yes, they are automatic gates. They used to
2 be --

3 Q Where you have to punch in a code or
4 something, or --

5 A There used to be a guard there. Years
6 previously they decided to get rid of the guard and put
7 automatic gates. It's a two-gate system to get through.
8 There is one that is a bar code, and there is a scanner
9 that scans your bar code, and the car -- it's placed on
10 your car, that goes through.

11 There is another entryway that actually has
12 a phone entry, where you would actually call someone to
13 get in.

14 Q And the -- the bar code scanners and what
15 have you, is that the responsibility of the master
16 association?

17 A That is correct.

18 Q Okay.

19 A There's also proximity cards that go with
20 the -- with -- with those bar codes.

21 Q Okay.

22 A Bar codes are on one. There is a proximity
23 card that you can use to get through the other, or the
24 back gate also. And all the magnetic locks are all
25 interlocked onto that proximity card.

1 Q Okay. So now with regard -- going back
2 again to the production that you guys produced, document
3 LL-4 here appears to be a map that's a -- the west coast
4 of Florida here, which I guess shows where Laguna Lakes
5 is, and it also has the name, the logo.

6 A Uh-huh.

7 Q It says Transeastern Homes, correct?

8 A Yes.

9 Q All right. So, that would have been, again,
10 as far as you know, materials produced used by
11 Transeastern Homes in the sale and development of Laguna
12 Lakes?

13 A Yes.

14 Q And then the next page is a picture of some
15 sort, LL-5, called Club Laguna, Laguna Lakes?

16 A Uh-huh.

17 Q Is Club Laguna supposed to be the
18 clubhouse/pool area?

19 A Correct.

20 Q Okay. And this picture in Club Laguna, is
21 this something that the association prepared, or as far
22 as you know, something that Transeastern would have
23 prepared to promote the sale and development of Laguna
24 Lakes?

25 A I would guess that it was Transeastern.

1 Q You don't know for a fact, though?

2 A No, I do not.

3 Q Okay. The next section here is titled -- is
4 page LL-6, Laguna Lakes, and appears to be -- it's got
5 the logo on here and it's got a bunch of prices for
6 different models.

7 A Uh-huh.

8 Q And then at the bottom it says Transeastern
9 Homes.

10 A Okay.

11 Q As far as you know, this would have been
12 something also prepared by Transeastern for the sale and
13 development of Laguna Lakes properties back when they
14 were selling them?

15 A I would guess.

16 Q It says effective September 22nd, 2003, so
17 that would have been the date when this list was
18 effective, right?

19 A I would imagine.

20 Q Okay. And this address, 9201 Gladiolus
21 Drive, Fort Myers, Florida, do you know who -- what
22 address that's for?

23 A I believe that was the office set up across
24 the street from Laguna Lakes that they were utilizing.

25 Q Okay. That's not the address for the master

1 association, correct?

2 A Correct.

3 Q And www.LagunaLakes.com, that was the
4 website being used by Transeastern Homes?

5 A I -- I would imagine, yes.

6 Q And the next page LL-7, I know that the copy
7 is a little dark. This is how I got it from your --
8 from your attorneys. It looks like -- I don't know if
9 it's a card or an advertisement of some sort for Laguna
10 Lakes, but it's got the name and the logo here, correct?

11 A I'm actually looking and trying to --

12 Q And --

13 MR. ANNUNZIATA: Which page?

14 THE WITNESS: Yeah, I --

15 MR. BEHREN: Is he still okay, or --

16 THE WITNESS: I'm on the right page -- oh,
17 there it is. Okay. I was looking --

18 MR. ANNUNZIATA: LL-5?

19 THE WITNESS: Yeah, this is --

20 MR. BEHREN: I think there is a way, too,
21 where you can get rid on of the dropbox menu on
22 the side so you can look at the pictures
23 without -- here, you want me to --

24 THE WITNESS: Well, you know what it is, is
25 once it -- once -- once you pick it up and spin

1 it, it actually --

2 MR. BEHREN: Okay. It goes back to the side
3 there.

4 THE WITNESS: It goes back -- yeah, there we
5 go. So, yeah.

6 MR. ANNUNZIATA: That's 7. He's looking at
7 L-7. Is that what you are talking about?

8 MR. BEHREN: LL-7.

9 THE WITNESS: Right.

10 BY MR. BEHREN:

11 Q Okay. So, once again, this would have been
12 something -- it says Transeastern Homes.com on the top,
13 so this is also material produced to sell and market
14 Laguna Lakes by Transeastern Homes, as far as you
15 understand?

16 A Yes.

17 Q This was not generated by the master
18 association of Laguna Lakes, as far as you know?

19 A As far as I know.

20 Q And then on the next page it says
21 something -- Transeastern's most successful community,
22 your luxury lifestyle. It's really dark, I can't really
23 read it, but it looks like there might be a logo for
24 Laguna Lakes on the bottom of that. That's also
25 something that, as far as you know, the association

1 didn't generate?

2 A To my knowledge, I would imagine that you
3 would be correct.

4 Q Okay. Going to the next page, LL-9, this
5 looks like it's just another -- this would be just
6 another picture of the front -- home page of the
7 website?

8 A Correct.

9 Q Which we already talked about.

10 LL-10 is another -- looks like another
11 document here. It says final call, grand closeout,
12 TranseasternHome.com, and then at the bottom it has
13 Laguna Lakes and the logo.

14 And on the top it looks like it says -- it
15 says The News -- News-Press, perhaps, Sunday, January
16 two thousand and -- can't read the date, but it looks
17 like maybe --

18 A Two thousand --

19 Q -- 2005.

20 A January 9 of '05.

21 Q Okay. This, again -- would this have been
22 something that the master association created, or
23 something that, as far as you know, Transeastern created
24 to sell its homes?

25 A I would say it would be Transeastern.

1 Q This next document, LL-11, is -- it says
2 Robert -- you haven't -- you don't know anything about
3 this, I assume, Hajicek, this a check to him?

4 A Okay.

5 Q Do you know anything about that at all?

6 MR. MARINO: It's a discount coupon that --

7 THE WITNESS: No. Hmm. No.

8 MR. BEHREN: Okay.

9 BY MR. BEHREN:

10 Q LL-12, do you recognize this letter at all,
11 January 30th, 2004, re, Sprint phone service, dear
12 Laguna Lakes resident?

13 A Do I remember it?

14 Q Do you recognize that?

15 A I -- I --

16 Q Did you get that letter, or you don't know?

17 A I don't remember. I was living there by
18 that time, so I probably did get it, but I don't recall
19 one way --

20 Q Who is Kevin Jarrett, do you remember him,
21 sales manager?

22 A I remember the name, I don't really remember
23 him.

24 Q There was -- well, let me ask you this: As
25 far as you know --

1 A Uh-huh.

2 Q -- was he an employee of -- as far as you
3 know, was he an employee of Laguna Lakes master
4 association?

5 MR. HARDERS: Objection. Harders.

6 BY MR. BEHREN:

7 Q Let me rephrase the question.

8 As far as you know, was Kevin Jarrett an
9 employee of Laguna Lakes Community Association, Inc.?

10 MR. HARDERS: Same objection. Harders.

11 MR. BEHREN: You can answer, to the extent
12 that you know.

13 MR. HARDERS: You can answer.

14 THE WITNESS: I don't believe he was for the
15 master, correct, you're asking?

16 MR. BEHREN: Correct.

17 THE WITNESS: Right. I don't believe he
18 was --

19 BY MR. BEHREN:

20 Q Do you know who he was an employee of?

21 A I don't know. I -- I don't know if he was
22 for Transeastern or someone else, to tell you the truth.

23 Q And on the bottom of this document also, it
24 has Transeastern Homes logo, as well as -- at the top it
25 has Laguna Lakes logo, right?

1 A Correct.

2 Q On the bottom it has Transeastern Homes
3 logo?

4 A Correct.

5 Q It has an address of 9139 Spring Mountain
6 Way, Fort Myers. Do you know where that is?

7 A Yes, I do.

8 Q Where is that?

9 A That is in the Monterey parcel of Laguna
10 Lakes.

11 Q Okay. So, was that a --

12 A Home.

13 Q I'm sorry? It was like a model home there?

14 A Correct.

15 Q Okay. Was that owned by a parcel, or by
16 Laguna Lakes Community Association, or by Transeastern
17 Homes, if you know?

18 A I -- I specifically do not know, but I --

19 Q All right.

20 A -- would have imagine that it was
21 Transeastern.

22 Q Okay. And then the next page here, LL-13, I
23 guess at the top it says Transeastern Homes, built with
24 pride, welcome to Laguna Lakes. It has that same
25 address on the bottom.

1 Do you recognize this page at all? I mean,
2 is this something that you received, or --

3 A I believe I did receive this. I'm not
4 exactly -- I -- full remembrance.

5 Q All right. This next document here, LL-17,
6 this is a letter to you in Toms River from Laguna Lakes,
7 correct?

8 A Hang on a second.

9 Q It's LL-17.

10 A Yeah, yes.

11 Q And you provided this to counsel, I guess,
12 to produce in this case?

13 A Yes.

14 Q And it has here, I guess, also Laguna Lakes
15 logo. And it was from Transeastern Homes to you,
16 correct?

17 A Correct.

18 Q And it has 9209 Arragon Avenue. Do you know
19 where that was?

20 A 9209 Calle Arragon Avenue.

21 Q Sorry, Calle Arragon Avenue.

22 A That is the Pebble Beach condo unit at the
23 very front, main entranceway.

24 Q Okay. So, that was like -- was that a model
25 home of some sort also?

1 A Yes.

2 Q Okay. And then that also was --

3 LagunaLakes.com, it has on here as the webpage, right?

4 A I would imagine -- yes, it does.

5 Q This is something you got from Transeastern,

6 correct --

7 A Yeah.

8 Q -- not from the master association?

9 A That's correct.

10 Q And then just going on to LL-20, it says

11 prospectus for Pebble Beach at Laguna Lakes, a

12 condominium?

13 A Uh-huh.

14 Q This would have been the prospectus you

15 received when you were buying a Pebble Beach

16 condominium?

17 A That's correct.

18 Q So, does this document contain then both the

19 master association documents as well as the Pebble Beach

20 parcel association documents?

21 A Yes, it does.

22 Q And looking at LL-36, you got that, Articles

23 of Incorporation?

24 A Yes.

25 Q Do you recognize that?

1 A Yes.

2 Q That's the Articles of Incorporation for
3 Laguna Lakes Community Association?

4 A Yes.

5 Q Okay. And you would agree that under
6 Article 2 purpose, it says that the job of the community
7 association is to enforce and exercise the duties of the
8 community association as provided in the declaration,
9 right?

10 A Yes.

11 MR. ROTHSCHILD: Object. Chad.

12 MR. BEHREN: Okay.

13 BY MR. BEHREN:

14 Q It also says under 2.2.1, that is to promote
15 the health, safety, welfare, comfort and social and
16 economic welfare of the members and the owners and
17 residents of the subject property as authorized by the
18 declaration, by these articles and by the bylaws,
19 correct?

20 MR. ROTHSCHILD: Object. Chad.

21 BY MR. BEHREN:

22 Q That's what it says, sir?

23 MR. ROTHSCHILD: You can answer.

24 THE WITNESS: That's what it says, yes.

25

1 BY MR. BEHREN:

2 Q Okay. Are you aware anywhere in the
3 declaration where it says that -- the master declaration
4 for Laguna Lakes, that one of the jobs of the Laguna
5 Lakes is to register trademarks, logos and intellectual
6 property?

7 MR. ROTHSCILD: Object. Chad.

8 You can answer.

9 THE WITNESS: I believe that in the --
10 promote of health, safety, welfare, welfare being
11 the key word, the social and economic, economic
12 welfare being the keywords, that it is our
13 fiduciary duty to protect all assets of Laguna
14 Lakes Community Association, and their name and
15 logo would be definitely part of that.

16 BY MR. BEHREN:

17 Q Okay. And is it your contention that
18 Mr. Marino's use of the name and logo is harming the
19 association?

20 A It has the potential to do harm, yes.

21 Q But the question is, as far as you know, has
22 Mr. Marino's use of the name or logo harmed the
23 association?

24 A To my knowledge, it hasn't harmed.

25 Q Has anybody, to you, expressed any

1 confusion, as far as you know, between Mr. Marino and
2 the Laguna Lakes Community Association?

3 A Has anyone expressed the confusion?

4 Q Yeah.

5 A I have had different people express the --
6 their concerns to me, yes, residents.

7 Q Different people expressed their concerns?

8 A Yes.

9 Q Who has expressed their concerns, and what
10 did they tell you?

11 A Different residents over the years have
12 mentioned it to me and, you know --

13 Q Different residents have expressed their
14 concerns. Who were the residents, do you recall?

15 A I don't really recall. There's, you know
16 specific -- other than the board members, once we
17 actually started talking about it, I don't really
18 remember different names.

19 Q What were the concerns that were expressed
20 to you?

21 A It started out as, does this Realtor work
22 for the community association? My reply is no. And
23 their reply was, it certainly seems that way.

24 Q Okay. Based upon what?

25 A Basically that he's using the name Laguna

1 Lakes, he's using the logo of Laguna Lakes, he calls
2 himself Mr. Laguna Lakes. When you combine the three of
3 them on signage or advertising of any type, it
4 definitely comes across as he is representing himself
5 for the community, of the community.

6 Q Has he ever -- as far as you know, has
7 Mr. Marino ever relayed that he is a representative or
8 employee or a contractor of the Laguna Lakes Community
9 Association?

10 A I -- never to me, no.

11 Q You're not aware of anybody telling you that
12 either, are you?

13 A I can't -- I don't recall, no.

14 Q Aren't there other Realtors even today who
15 are currently using the Laguna Lakes name and logo in
16 their sales materials?

17 A No. Not to my knowledge, no. Others have
18 used it in the past, yes.

19 Q Such as who?

20 A I don't recall their names.

21 Q Have you all complained to the other
22 Realtors about the use of the name or the logo?

23 A Yes, we did.

24 Q Okay. And what was the response?

25 A They stopped.

1 Q Did you use lawyers to send them like some
2 type of cease and desist letter?

3 A We tried to do it verbally first, and that
4 was effective.

5 Q And you don't remember who these Realtors
6 were?

7 A Off the top of my head, no. There were many
8 different Realtors in Laguna.

9 Q And, like I said, there are still some today
10 who are still using the name and the logo, too, correct?

11 A Not to my knowledge. I haven't seen anyone.

12 Q Okay. And you would agree also, though, in
13 the Articles of Incorporation and the master
14 declaration, there is nothing that references the
15 ability to maintain goodwill or intellectual property of
16 the association, correct?

17 MR. HARDERS: Objection. Harders.

18 Go ahead and answer, Patrick.

19 THE WITNESS: What was that now?

20 BY MR. BEHREN:

21 Q There's nothing specifically in the Articles
22 of Incorporation or the master declaration that set
23 forth that one of the duties of the master association
24 is to maintain or inventory intellectual property,
25 correct?

1 A Not individual property, no.

2 Q There is nothing that says anything about
3 intellectual property either, correct?

4 A I don't believe so.

5 Q There isn't even anything in any of these --
6 the master declaration or the Articles of Incorporation
7 indicating that Laguna Lakes Community Association is
8 the owner of the name or the logo, correct?

9 MR. ROTHSCHILD: Object. Chad.

10 MR. HARDERS: Go ahead and answer, Patrick,
11 if you know.

12 THE WITNESS: I don't believe that there is
13 anything in the articles or declaration.

14 BY MR. BEHREN:

15 Q And you would agree also that -- when you
16 said you're trying to protect the economic well being of
17 the community, isn't it in the economic well being of
18 the community to have Realtors selling units in Laguna
19 Lakes for the highest possible prices that the market
20 will bear?

21 A Absolutely.

22 Q As far as you know, isn't that something
23 that Mr. Marino is doing?

24 A As far as I know, I would say that that
25 would be possible. I don't know -- I don't know the

1 financials. I don't look at -- I have -- I don't see
2 what he is and is not doing.

3 When I get stuff that comes across, as far
4 as what has sold and who -- you know, as far as
5 paperwork, it definitely comes across to the master
6 board and the estoppel. I don't really look at who's
7 selling it, or I -- I look at bottom line, who's --
8 who's buying, are there -- is the home up to date on
9 fees, and that's really what my main focus is. I don't
10 look at price, I don't look at --

11 Q Let me move you along to document LL-165.

12 A Oh, almost.

13 Q It's towards the end.

14 A Yeah, I know.

15 Okay, yeah.

16 Q And what -- do you recognize this document
17 here, LL-165?

18 A Yes, I do.

19 Q What is that?

20 A That is a mailer from Mr. Marino.

21 Q Okay. Is that -- was that sent to you?

22 A It was sent to, I believe, every resident in
23 Laguna Lakes.

24 Q Okay. But, I'm just -- I mean -- so, did
25 you get one of these? Is this yours here that was

1 produced to the attorneys, as far as you know, or you're
2 not sure?

3 A It very well may be. I'm -- I -- I -- that
4 part of it, I can't -- I don't remember if I gave one or
5 not.

6 Q Looking at LL-166 -- by the way, 165, too,
7 under Mr. Marino's name and Mr. Laguna Lakes, it says
8 Amerivest Realty, correct?

9 A Yes.

10 Q And also LL-165 is a -- you said is another
11 mailer that was sent out by Mr. Marino, as far as you
12 know?

13 UNIDENTIFIED SPEAKER: Object. He can
14 answer.

15 THE WITNESS: One six five?

16 BY MR. BEHREN:

17 Q LL -- I'm sorry, LL-166. Pardon me.

18 A I don't really recognize this one, but it
19 could be.

20 Q Okay. Once again, though, too, it works --
21 Mr. Laguna Lakes, it refers to him as somebody for --
22 who works, I guess, through Amerivest Realty, correct?

23 A Yes.

24 Q And that's on the return address also here
25 on the -- on the right-hand side of this postcard,

1 correct?

2 A Yes.

3 Q And he's got the web address listed here of
4 www.MrLagunaLakes.com, right?

5 A Correct.

6 Q Have you been on that site before?

7 A No.

8 Q Have you been on the website LagunaLakes.com
9 before?

10 A No, I have not.

11 Q You're not a big Internet guy, huh?

12 No?

13 A No. I -- I go on the Internet a lot, but
14 I --

15 Q But just not looking at these types of
16 things?

17 A No.

18 Q How about LL-167, do you recognize that
19 document?

20 A I -- I have seen many of these, so whether
21 it's this specific one or not -- but, yes, I have seen
22 something just like this repeatedly, yes.

23 Q Okay. And LL-168 also?

24 A Yes.

25 Q This next document, LL-169, it's an MLS

1 listing. Any idea why this was produced to us by your
2 attorneys?

3 MR. ANNUNZIATA: Object to form.

4 MR. BEHREN: Well, I -- let me make
5 something clear.

6 One of you guys is going to have to choose
7 who is defending the deposition, and one of you
8 guys can make the objections. I'm not going to
9 have Harder and the other guy and you. I'm not
10 going to get triple-teamed here. So, one person
11 needs to say who is the person that's defending
12 this depo, and then that's the one who I would
13 expect to make objections and deal with me, not
14 three of you.

15 So, who's -- who's stepping up to that role
16 right now?

17 UNIDENTIFIED SPEAKER: Harders will be the
18 primary one, but I need my cocounsel there with
19 you in the office to be able to object.

20 MR. BEHREN: I'm not going to let him object
21 to questions. I mean, you know, if he wants to
22 sit here -- obviously, he's -- you know, he's
23 sitting here and he's --

24 MR. ANNUNZIATA: I just objected to form.

25 MR. BEHREN: No, I understand that, but

1 there shouldn't be multiple attorneys objecting to
2 the questions. I mean, there should be one.

3 UNIDENTIFIED SPEAKER: Go ahead and answer,
4 Patrick.

5 THE COURT REPORTER: Who was that?

6 THE WITNESS: I'm looking at this. I -- I
7 really don't know why that they would have put
8 that in.

9 BY MR. BEHREN:

10 Q Okay. I mean, I don't see Mr. Marino
11 referenced anywhere in here, correct? It looks like
12 there is an Adriana Fernandez, who I guess has this
13 particular listing. Do you know her?

14 A No, I do not.

15 Q And this next page, LL-170 --

16 A Okay.

17 Q -- do you know what this is here?

18 A It's a floor plan.

19 Q Okay. Any idea why this is in this packet
20 of materials that was produced to me?

21 A Because it would be a floor plan for one of
22 the models maybe.

23 Q Do you know who actually prepared this floor
24 plan? Was this prepared by Transeastern, or the master
25 association, or Mr. Marino, or do you know?

1 A I don't know, but it says copyright 2006,
2 Gerard Marino.

3 Q Okay. And as far as you know, has the
4 master association ever prepared floor plans for units
5 contained in various parcels?

6 A No, but I know that the master board had
7 already taken over all of Laguna Lakes by that time.

8 Q Well, they took over the common areas of
9 Laguna Lakes by that time, correct?

10 A 2006, correct.

11 Q By the way, who did they take -- do you know
12 who it was that Laguna Lakes took over the -- do you
13 know who it was that the Laguna Lakes Community
14 Association, Inc. took over the common areas from in
15 2006?

16 A I believe it was Transeastern Homes.

17 Q Okay. Well, if you look at LL-97, it should
18 be the quitclaim deed dated December 2nd, 2003.

19 A Okay.

20 Q It indicates apparently that you were
21 deed -- quitclaimed property -- Laguna Lakes Community
22 Association was quitclaimed property from Transeastern
23 Laguna Lakes, LLC, correct?

24 A Okay, yes.

25 Q Any idea whether Transeastern Laguna Lakes,

1 LLC was the same as Transeastern Homes?

2 A I actually never noticed Transeastern Laguna
3 Lakes, LLC, so -- but I would imagine it was
4 Transeastern. That's the best I could tell you.

5 Q So, you don't know if there's a -- if there
6 was a distinction between the Transeastern Laguna Lakes,
7 LLC entity and Transeastern Homes, LLC -- I mean
8 Transeastern Homes entity, do you?

9 A No.

10 Q And under this quitclaim deed also, it says
11 the property that was conveyed hereby is intended to be
12 common area pursuant to the master declaration for
13 Laguna Lakes, right?

14 A Yes.

15 Q Does the master declaration for Laguna Lakes
16 define what the common area is?

17 A Yes.

18 Q Okay. So, you would agree that under this
19 quitclaim deed, Transeastern Laguna Lakes, LLC was
20 giving -- or turning over to Laguna Lakes Community
21 Association, Inc. the common area as defined in the
22 master declaration for Laguna Lakes, correct?

23 A Correct.

24 Q Now, with regard to Exhibit -- going back to
25 Exhibit A here -- and I will take that back from you. I

1 am done with the production that they gave me.

2 A Okay.

3 UNIDENTIFIED SPEAKER: If this would be a
4 convenient time, or if -- if soon, I don't want to
5 interrupt you here, but if we could just take a
6 five - or a ten-minute break to refill the water
7 glasses?

8 MR. BEHREN: That's fine, okay.

9 UNIDENTIFIED SPEAKER: At a convenient time.

10 MR. BEHREN: That's fine. I'm at a breaking
11 point, so that's fine.

12 MR. ANNUNZIATA: It's noon. What are you
13 guys doing for lunch? Are you taking a quick
14 break, or are you going to --

15 MR. BEHREN: Well, I'd prefer to --

16 MR. ANNUNZIATA: Because he's here until
17 2:00, or till -- yeah, at least until 2:00.

18 MR. BEHREN: Well, then, I would prefer to
19 push forward right now rather than break.

20 UNIDENTIFIED SPEAKER: Yeah, we're happy
21 with that, too.

22 MR. ANNUNZIATA: All right.

23 UNIDENTIFIED SPEAKER: Talk to you in ten
24 minutes.

25 (A brief recess was taken.)

1 MR. BEHREN: All right. Going back on the
2 record.

3 BY MR. BEHREN:

4 Q Do you know when it was that Mr. Marino
5 first started using the Laguna Lakes name and logo?

6 A Specifically when, no.

7 Q Yeah, do you know when?

8 A No.

9 Q Okay. Would you agree that, as far as you
10 know, Mr -- Mr. -- they are washing clothes again over
11 there.

12 UNIDENTIFIED SPEAKER: I know now, it's
13 definitely when the AC kicks on, because I tried
14 to move the phone and it's right over the vent, so
15 we'll try to turn that off.

16 BY MR. BEHREN:

17 Q Do you -- again, so the question is, do you
18 know whether or not Mr. Marino was using the Laguna
19 Lakes name and logo when Transeastern was still selling
20 and marketing homes in Laguna Lakes?

21 A Was he using the name and logo?

22 Q Yeah.

23 A I don't know specifically. I do know that I
24 hadn't seen the logo as part of things until the last
25 few years.

1 Q Okay. So, but as far as you know, was
2 Mr. Marino selling units as Mr. Laguna Lakes while
3 Transeastern Homes was still marketing and selling
4 properties there?

5 A I do not know.

6 Q You would agree, though, that Mr. Marino has
7 been selling and marketing Laguna Lakes properties for a
8 long time, correct?

9 A A long time, yes.

10 Q Since you moved into the property, into the
11 development, as far as you know, has he been selling
12 Laguna Lakes properties?

13 A I -- I -- I really don't recall one way or
14 the other.

15 Q Have any of the association parcels
16 complained about Mr. Marino selling properties, to your
17 knowledge?

18 A Other than placing signs up and around, no.

19 Q By the way, if you are successful in
20 obtaining registration of this trademark, do you intend
21 to prohibit the parcel associations from using the name
22 and logo?

23 A I do not believe that they actually use the
24 logo for any commercial use, but as members of the
25 overall community, I would -- I would imagine that the

1 board, whoever that may be at that time, would have the
2 last say-so on that, yes.

3 Q So, you don't know at this time?

4 A I can't -- no, that's a -- that's a board
5 decision, that's not my decision.

6 Q Okay. And you testified before that it's
7 the -- your -- in the interest of the board to promote
8 the social welfare of the development, correct?

9 A That's correct.

10 Q So, you would agree that it would be in the
11 social welfare of the development for people who are
12 trying to sell units, to be able to sell them, right?

13 A Yes.

14 Q So, how is it that stopping Mr. Marino from
15 selling units in Laguna Lakes would promote the social
16 welfare of the development?

17 UNIDENTIFIED SPEAKER: Object.

18 MR. BEHREN: You can answer.

19 UNIDENTIFIED SPEAKER: Go ahead, Patrick, if
20 you know.

21 THE WITNESS: I don't believe we are trying
22 to get him to stop selling units, I believe that
23 what we are trying to stop is the idea of any
24 Realtor or other persons representing themselves
25 as if they are part of the association.

1 BY MR. BEHREN:

2 Q So, is it your contention that by him using
3 the name Mr. Laguna Lakes, that he is representing
4 himself as part of the association?

5 A No, it is not.

6 Q Are you attempting to keep him from using
7 the name Mr. Laguna Lakes?

8 A I don't believe that Mr. Laguna Lakes really
9 contended in this. I believe it was the name Laguna
10 Lakes with the logo combination that really presented
11 the biggest part of the problem.

12 Q Okay. So, as far as you know, you are not
13 attempting to prevent Mr. Marino from selling properties
14 in Laguna Lakes or using the Mr. Laguna Lakes name,
15 correct?

16 A Correct.

17 UNIDENTIFIED SPEAKER: Object. This is --
18 this is -- you brought this opposition to prevent
19 the association from registering its intellectual
20 properties.

21 MR. BEHREN: Can you -- can you please not
22 make speaking objections? I'm sure that that's
23 not prescribed or allowed by the TTAB rules. If
24 you have an objection and want to instruct the
25 witness not to answer, I guess that's your

1 prerogative, but please don't make speaking
2 objections.

3 UNIDENTIFIED SPEAKER: I mean, I'm trying to
4 get a point that this has nothing to do -- we have
5 given you a lot of latitude. We haven't even
6 touched on anything that he was noticed for.

7 MR. BEHREN: Can we, please -- again, you're
8 making speaking objections. Are you instructing
9 the witness not to answer or not?

10 UNIDENTIFIED SPEAKER: The point of what the
11 board is trying to do or will do is irrelevant to
12 anything in this case.

13 MR. BEHREN: I disagree, but go ahead.

14 Are you instructing the witness not to
15 answer or not?

16 UNIDENTIFIED SPEAKER: No. Go ahead and
17 answer, Patrick, if you know what a future board
18 is going to do.

19 THE WITNESS: Could you repeat the question?

20 MR. BEHREN: Right.

21 BY MR. BEHREN:

22 Q So, again, it's -- as far as you know, it's
23 not the board's intention to prevent Mr. Marino from
24 selling properties or from using the name Mr. Laguna
25 Lakes, correct?

1 A This board would -- would agree with that,
2 yes.

3 Q Okay.

4 A Following boards, I can't --

5 Q I understand.

6 So, as far as you know, it's the -- it was
7 the board's attempt -- or the board's intent is to have
8 Mr. Marino stop using the logo on his materials? Is
9 that what the issue is?

10 A The name LagunaLakes.com, with the
11 accompaniment of the logo, presents a problem.

12 Q Why didn't -- if you all were so concerned
13 about LagunaLakes.com, why all didn't you purchase that
14 domain name?

15 A Well, first of all, we -- we already had
16 Laguna Lakes Community Association name, so we didn't
17 need to go any further than that.

18 Second of all, we never actually had a
19 problem until all of a sudden the combination of things
20 started to show up, and -- and, in other words, when you
21 saw Mr. -- not Mr. Laguna Lakes, but when you saw
22 LagunaLakes.com and a logo in an advertisement going
23 out, it clearly represents itself as being part of this
24 association. Whether it says something on there of
25 Amerest (phonetic spelling) or not, it still clearly

1 represents itself as an association.

2 Q Okay. So, approximately when was it that
3 then you all decided that Mr. Marino's combination, I
4 guess, of various things was problematic for the
5 association?

6 A The exact date of when we started to discuss
7 it, it was in -- what was it? Was it April or -- April
8 or May of 2011. Again, this was a new sitting board.
9 Our first meeting was the end of February.

10 Q So, was -- is it -- would it be a fair
11 statement that the sole intent behind seeking trademark
12 registration of the name and logo was to proscribe
13 Mr. Marino from using it in his advertising?

14 UNIDENTIFIED SPEAKER: Object.

15 Go ahead, Patrick, if you -- if you know the
16 answer.

17 THE WITNESS: It was not just Mr. Marino, it
18 was other -- any -- any outside business, person,
19 whatever, using the name Laguna Lakes, in
20 combination with the logo, to that board
21 represented itself as the board association, that
22 was what we felt.

23 MR. MARINO: Which one are you looking for?

24 (Off-the-record discussion.)

25

1 (Deposition Exhibit C was marked for
2 identification.)

3 BY MR. BEHREN:

4 Q Let me show you exhibit, what I am going to
5 mark as Exhibit C.

6 Do you all have a problem with Re/Max, for
7 instance, maintaining a site called
8 LagunaLakesHomeReport.com?

9 A Yes.

10 Q Have you seen that?

11 A I believe -- I think we --

12 MR. ANNUNZIATA: Which -- is this in the
13 book at all?

14 MR. MARINO: Uh-huh.

15 MR. ANNUNZIATA: And you're looking at
16 Exhibit C, which is, what, you know -- guys, you
17 see what he's talking about?

18 MR. BEHREN: A Re/Max postcard.

19 UNIDENTIFIED SPEAKER: Is there a new
20 document that we are looking at now?

21 THE WITNESS: Yes.

22 MR. ANNUNZIATA: Yeah. He has presented a
23 document. It's on a green -- you don't see a
24 green tab. It's hard to really say what page.
25 It's a --

1 MR. MARINO: You don't have --

2 MR. BEHREN: Yeah, okay, that's why --

3 (Off-the-record discussion.)

4 MR. BEHREN: Yeah, everybody's got to stop
5 talking at once here.

6 MR. ANNUNZIATA: It's halfway through the
7 stack of papers.

8 UNIDENTIFIED SPEAKER: How many pages were
9 in the fax?

10 MR. ANNUNZIATA: Hold on.

11 UNIDENTIFIED SPEAKER: Did you guys drop
12 off? I can't even --

13 MR. ANNUNZIATA: No, we're here. I'm
14 counting, I'm counting.

15 UNIDENTIFIED SPEAKER: Doesn't it have a
16 header, like a page --

17 MR. ANNUNZIATA: No. It has -- no, there is
18 no page number on it.

19 Go halfway through and you will see a --
20 with what you got, all you see are black and white
21 copies, so you need to go -- it's just best if I
22 count the pages.

23 UNIDENTIFIED SPEAKER: I'm guess what I'm
24 trying to figure out is which stack of the four
25 that it might be in.

1 MR. ANNUNZIATA: I have no way of telling
2 you that.

3 (Off-the-record discussion.)

4 BY MR. BEHREN:

5 Q Exhibit C --

6 A Yes.

7 Q -- right, is a postcard from Re/Max, from a
8 Realtor here, that's using LagunaLakesHomeReport.com,
9 correct?

10 A Correct.

11 Q Has anybody on the board contacted them to
12 advise them to not use Laguna Lakes in their sale of
13 Laguna Lakes properties?

14 A He was approached by the CAM.

15 Q He was approached by who?

16 A The CAM.

17 Q The CAM?

18 A Community manager.

19 Q Who is the community manager?

20 A He -- he's Patrick -- his name is Patrick
21 Maguire.

22 Q All right.

23 A He works for our property.

24 Q So, he works for Alliance, or whatever,
25 Alliant?

1 A Yes.

2 Q For how long?

3 A I believe it was three years.

4 Q Is he still currently working for Alliant?

5 A No. He left about a month and a half ago.

6 Q Okay. So, you're saying he communicated
7 with this Re/Max person?

8 A To my knowledge, yes.

9 Q Is that site still up?

10 A I -- I never went and looked, so I couldn't
11 tell you.

12 (Deposition Exhibit D was marked for
13 identification.)

14 BY MR. BEHREN:

15 Q How about Exhibit D? It says Keller
16 Williams, somebody by the name of Kris Asquith. Do you
17 know her?

18 A I don't know her, no.

19 Q Do you know whether or not she maintains a
20 site called LagunaLakesRealEstateListings.com?

21 A I do not know that.

22 Q Did any of --

23 A I do --

24 Q Go ahead.

25 A I do recognize this. And I know that she

1 was asked to take it down, again by Patrick Maguire --

2 Q Do you know, did she --

3 A -- to stop advertise --

4 Q -- take it --

5 A I don't know. I don't -- I -- you know.

6 Q What's problematic with that? Do you
7 believe that somehow she's indicating that she's
8 affiliated with the association?

9 A Well, to -- to a certain degree, there were
10 other things that she had put out, and that's where the
11 problems started.

12 Q Such as what?

13 A Again, there -- at one point she was using
14 the signage with the logo with inside -- with the whole
15 name and the neighborhood of Laguna Lakes, and we
16 thought that that was problematic, as a representation
17 of the board somehow, and we asked her to stop. She
18 could change things around, but not to be using things
19 in any way to represent herself as these -- as part of
20 the association in any way.

21 Q What about the Re/Max person, did he do
22 something problematic also other than use Laguna Lakes
23 Report -- excuse me, LagunaLakesHomeReport.com?

24 A I believe this particular one was -- had a
25 different signage at one point also. I'm trying to

1 remember specifics, and I -- I'm drawing a blank.

2 I know that there were three people on the
3 radar and -- that were doing these things, as far as
4 Realtors go. There was other people that were using it,
5 they were also sent cease and desists, so --

6 Q Hold on a second.

7 So, you're saying the three Realtors on
8 the -- that you all were having an issue with was what,
9 Mr. Marino, Ms. Asquith, and then --

10 A Well, the names of the other two, I -- I
11 really don't know, because I don't even know them. I
12 did know Mr. Marino, so his name is more apt to stay
13 within my memory of everything.

14 (Deposition Exhibit E was marked for
15 identification.)

16 BY MR. BEHREN:

17 Q How about Exhibit E here, where there were
18 signs from a Jason Schroeder of Novelli, I-N-T,
19 advertising Laguna Lakes properties --

20 MR. ANNUNZIATA: Okay. Hang on a second.

21 You're --

22 BY MR. BEHREN:

23 Q -- do you have any issues with that guy?

24 MR. ANNUNZIATA: You're showing him
25 documents and you've marked them D and E. Have

1 you guys -- are you guys following the exhibits?

2 UNIDENTIFIED SPEAKER: No.

3 UNIDENTIFIED SPEAKER: I was going to ask,
4 do you have these documents?

5 MR. BEHREN: They are all in the stuff
6 that -- they were faxed.

7 (Off-the-record discussion.)

8 MR. ANNUNZIATA: It's the next two pages,
9 guys, from the yellow -- from the -- from the --

10 THE WITNESS: Postcard.

11 MR. ANNUNZIATA: -- from the postcard. It's
12 the very next one and the very next one. So, the
13 very next one is marked as Exhibit E, and the one
14 after that is marked as Exhibit D.

15 UNIDENTIFIED SPEAKER: What are they saying?
16 What's E saying?

17 MR. ANNUNZIATA: E is just a note from -- or
18 a picture of a -- of a -- of a sign from Jason
19 Schroeder at Novelli, I-N-T. Whether it's Novelli
20 International -- but it looks like it's a sign.
21 It says Laguna Lakes, five bed, slash, three-car
22 garage. It's just a sign.

23 UNIDENTIFIED SPEAKER: Because I think the
24 order -- you know, they might not -- they might
25 have gotten mixed up in the order of the fax.

1 UNIDENTIFIED SPEAKER: Okay, Jason Schroeder
2 we got, E. What's F?

3 MR. ANNUNZIATA: No, no, that -- that's E.
4 And then if you go before that, D is the very
5 next --

6 UNIDENTIFIED SPEAKER: D?

7 MR. ANNUNZIATA: -- is the Kris Asquith --

8 UNIDENTIFIED SPEAKER: We have got that one.

9 UNIDENTIFIED SPEAKER: We have got that one.

10 MR. ANNUNZIATA: Okay. So, that's D. Then
11 E is Jason Schroeder.

12 UNIDENTIFIED SPEAKER: We have got that.

13 MR. ANNUNZIATA: Go ahead.

14 MR. BEHREN: All right.

15 MR. ANNUNZIATA: And if we could take it a
16 little slower -- I understand you got to move
17 forward, if you could just take it and just let
18 them know what you're doing so they can follow,
19 too, please.

20 BY MR. BEHREN:

21 Q All right. So, now, other than -- you just
22 talked about Realtors. What other persons or parties
23 out there were there issues with, with regard to use of,
24 I guess, the name or logo of Laguna Lakes?

25 A I don't believe that this gentleman was

1 referred to as -- or talked to as far as a problematic
2 person -- or set-up of Laguna Lakes with the -- with the
3 logo. It didn't really necessarily came across as he
4 was representing himself as there. However, he was
5 spoken to about the signage and putting the signs on the
6 property were not acceptable.

7 Q Okay. Well, moving on, then, you said there
8 were other people other than Realtors who there were
9 issues with?

10 A Yes.

11 Q Who are we -- what are we referring to?

12 A We had a resident that was out trying to
13 get -- drum up donations under the name of Laguna Lakes,
14 and she was sent a cease and desist letter immediate.

15 Q Okay. What kind of donations?

16 A I -- I'm not exactly sure, but she clearly
17 represented herself as a -- I don't know what the
18 donations were for. I know that she was operating
19 Angels of Laguna and some other club along that lines.
20 We had no problem with the clubs, but what we did have a
21 problem with was you go out and represent yourself as
22 part of the association, collecting things, is totally
23 different than you're just a club, looking --

24 Q Did she -- did she use the logo?

25 A I --

1 UNIDENTIFIED SPEAKER: (Unintelligible.)

2 THE COURT REPORTER: I'm sorry?

3 MR. BEHREN: Who just spoke?

4 THE COURT REPORTER: Who just spoke? And I
5 didn't hear what you said.

6 MR. ROTHSCHILD: It was just something that
7 was blurted out up here. It was Chad Rothschild.
8 And I won't repeat it, so it doesn't get in,
9 unless you would like me to, Mr. Behren.

10 MR. BEHREN: Like I said, I'm trying to --

11 MR. ROTHSCHILD: I understand.

12 MR. BEHREN: -- maintain one attorney
13 defending this deposition.

14 THE WITNESS: Okay. I -- I'm trying to
15 remember if there was a logo or not. We had a
16 business contact us, the board, and told us about
17 that.

18 BY MR. BEHREN:

19 Q The donations?

20 A That there were people out there clear --
21 you know, representing themselves as the association.

22 Q Are there other clubs and businesses
23 surrounding Laguna Lakes that refer to themselves as
24 Laguna -- like Laguna Cleaners, Laguna Pizza, or
25 anything of that nature, that you're aware of?

1 A I -- not that I'm aware of. This was a
2 resident that lived inside Laguna that started a little
3 club of women, of -- in Laguna. It had nothing to do
4 with -- it wasn't an official club, it was nothing
5 official about it.

6 Q So, were there multi -- so, she had a club
7 actually that was referred to something like Angels of
8 Laguna? Were there -- are there other clubs that are
9 within Laguna that refer to Laguna also?

10 A I don't believe there are any clubs any
11 longer.

12 Q Okay. And so I guess one of the things
13 you're applying -- you contend that Laguna Lakes
14 Community Association, Inc. owns this particular logo
15 that you applied for registration of?

16 A That's correct.

17 Q Okay. Based upon what? Who -- who -- where
18 did you get it from?

19 A Transeastern.

20 Q Who?

21 A What do you mean who?

22 Q Transeastern -- what Transeastern entity
23 gave it to you?

24 A It is our contention that at the turnover,
25 when we took over ownership, everything was quit-deeded

1 over to us and whatnot, that the sign clearly with the
2 logo and the name were on there. All the signage around
3 Laguna Lakes has the name and the logo present. Even
4 when it goes into a parcel, it says Pebble Beach,
5 Monterey, whichever one. And if it does have the logo,
6 it would have the logo with Laguna Lakes underneath
7 it --

8 Q Okay.

9 A -- to differentiate itself from --

10 Q So, it's your contention that you all have
11 inherited the logo by virtue of the quitclaim deed we
12 just went through before?

13 A That's absolutely correct.

14 Q Okay. But you don't know whether or not
15 Transeastern Laguna Lakes, LLC even owned that logo to
16 give you, do you?

17 A I couldn't tell you that they own it, no.

18 Q Okay. And as far as I could see, that
19 quitclaim deed only referred to real estate being
20 conveyed --

21 A Okay.

22 Q -- correct, and common areas, right?

23 A Right, yes.

24 Q And where -- did it reference somewhere in
25 that quitclaim deed that you were being transferred

1 ownership of --

2 A Well --

3 Q -- intellectual property rights and logos
4 and things of that nature?

5 A Okay. Well, you -- like you said, it was
6 the common areas, correct? The front entryway would be
7 a common area that the association is clearly
8 responsible for, and those signs are on both sides, with
9 the name and the log splashed.

10 When you go up to the clubhouse, again
11 common area, there was a sign right at the front door
12 with the name and the logo.

13 Q Okay. But, again, as far as you know, there
14 is no documentation from any Transeastern entity to
15 Laguna Lakes Community Association, Inc. giving them the
16 intellectual property, such as logos and things of that
17 nature, correct?

18 A I -- I -- I'm not sure of that, no. I don't
19 know.

20 Q You would agree also that even -- when did
21 the association -- when was the -- when did the Laguna
22 Lakes Community Association, Inc. take over the
23 association from Transeastern Laguna Lakes, LLC?

24 A The association -- let me -- can you repeat
25 that --

1 Q Sure.

2 A -- because I --

3 Q When did the Laguna Lakes Community
4 Association, Inc. take over the association from Laguna
5 Lakes -- excuse me, from Transeastern Laguna Lakes, LLC?

6 A The turnover?

7 Q Yes.

8 A The turnover was January of '06.

9 Q Okay. Was Transeastern still selling new
10 homes in the development at that point in time?

11 A I think there were still a few left.

12 Q Was Transeastern still using the logo to
13 sell those homes in their various promotional and
14 marketing materials?

15 A I believe they were.

16 Q Looking at Exhibit A, which is the Re-Notice
17 of Taking Depositions --

18 A Okay.

19 Q And, again, you were designated as the
20 corporate rep with the most knowledge of the various
21 issues set forth on attached Exhibit A. And one of the
22 issues was the first use of the marks applied for with
23 the USPTO.

24 When was it that you believe Laguna Lakes
25 Community Association, Inc. first started using the

1 Laguna Lakes stylized name and logo that you have
2 applied for trademarks on?

3 A When is the first time? To my knowledge, it
4 would be September of '03, when they started to put --
5 when they got things together for the county --

6 Q When --

7 A -- when they applied.

8 Q When who applied? I -- we got to clarify
9 that.

10 A Transeastern applied to do, I guess, the
11 community itself or whatnot, and they actually formed
12 Laguna Lakes Association.

13 Q Okay. So --

14 A I believe it was two -- I believe it was
15 September of '03.

16 Q Okay. So, you're saying September of '03,
17 the Articles of Incorporation were filed for Laguna
18 Lakes Community Association, Inc., correct?

19 A Correct.

20 Q Was there anywhere at any -- at that point
21 in time, was the Laguna Lakes Community Association,
22 Inc. using the name or the logo, or was Transeastern
23 using the name or the logo?

24 A Transeastern was using it.

25 Q So, then, the question is when was it that

1 you contend that Laguna Lakes first started -- Community
2 Association, first started using the name and the logo?

3 A Well, I believe when they started
4 community -- when they actually started the community,
5 they actually started the association at the same time.
6 And they were on the board. There was no owners on the
7 board up until the turnover.

8 Q Okay. But that would have been -- as I
9 understand it, Laguna Lakes Community Association, Inc.
10 was originally owned by, I believe, Transeastern Laguna
11 Lakes, LLC, correct?

12 A Yes.

13 Q Okay. So -- and, again, so you don't even
14 know whether Transeastern Laguna Lakes, LLC was ever the
15 owner or user of any of the logos or stylized name of
16 Laguna Lakes, correct?

17 A I don't believe I know that. I have no --
18 no knowledge of them owning or not -- not owning, no.

19 Q Let me ask you this: Do you know who
20 your -- who you purchased the property from? Who did
21 you get the deed to your unit from, do you know? Was it
22 from Transeastern Laguna Lakes, or was it from a
23 different Transeastern entity?

24 A I would have to go back and -- to refresh my
25 memory. Off the top of my head, I do not know.

1 Q So, again -- so, it's -- just to clarify, so
2 in September 2003 we know that Transeastern Laguna Lakes
3 filed the Articles of Incorporation for the Laguna Lakes
4 Community Association Inc., right?

5 A Yes.

6 Q And as of that time, Transeastern was using
7 the name and logo, but we don't know that Laguna Lakes
8 Community Association, Inc. was using the logo, correct?

9 UNIDENTIFIED SPEAKER: Objection. Let's go
10 ahead, that's fine.

11 THE WITNESS: I don't know for sure that the
12 association was using it, because -- how can I
13 word this? I really don't remember the usage of
14 it. I know that Transeastern used it right
15 from -- the door, right from the very beginning.
16 As they started to put out sales, that was their
17 name and their -- and the logo that they chose.
18 The association was created by them to take care
19 of the community itself.

20 BY MR. BEHREN:

21 Q And so -- and when the quitclaim deed
22 deeding, I guess, from Laguna -- the common areas from
23 Transeastern Laguna Lakes, LLC to Laguna Lakes Community
24 Association, Inc. was signed in December of 2003, was
25 the -- as far as you know, was the community association

1 using the logo at all, or was it still only being used
2 by Transeastern?

3 A I really couldn't tell you what the board
4 was using at that time.

5 Q Okay. Isn't it true that the first time the
6 association actually used the logo was in 2006, when
7 they set up the LagunaLakesCommunityAssociation.com
8 website?

9 UNIDENTIFIED SPEAKER: Object.

10 BY MR. BEHREN:

11 Q You can answer the question, sir.

12 UNIDENTIFIED SPEAKER: Go ahead.

13 THE WITNESS: I -- I couldn't tell you one
14 way or the other if that was the first time or
15 not.

16 BY MR. BEHREN:

17 Q Okay. Well, sir, you were --

18 A I'm not sure.

19 Q You were designated, though, as the person
20 with the most knowledge of the first use of the trade --
21 sought trademarks and interstate commerce -- or, excuse
22 me, of the -- of the applied for trademarks here. So, I
23 guess my question is, if you don't know, who would know?

24 A I couldn't tell you that. I really couldn't
25 tell you.

1 Q Was Ms. Fammang on the board prior to you?

2 A Yes she was.

3 Q For how long?

4 A Let's see. I believe she was on the board
5 for a year a few years previous to me and then two years
6 during that time.

7 Q Would she have better knowledge than you as
8 to when the first use of the marks applied for with the
9 USPTO?

10 A You would have to ask her; I couldn't answer
11 that.

12 Q Because you don't know? But you don't --
13 you don't really have knowledge of it then?

14 A I don't have specific knowledge of
15 everything that a board did or did not do with the
16 association matters from the beginning of 2003 on,
17 especially since I didn't move in until December of '04.

18 Q Okay. So, as of December of '04, to your
19 knowledge, was the Laguna Lakes Community Association,
20 Inc. using the stylized name and logo, or was
21 Transeastern using it?

22 A I -- again, what a board does and does not
23 do, I -- you know, I -- I really don't know. I know
24 that I had gone to many of the meetings, not all of the
25 meetings. Exactly what they were and were not doing, I

1 could not tell you that. Without having to go back and
2 talk to each and every one of the board members from the
3 beginning, I couldn't speak for them.

4 Q But Laguna Lakes is a nonprofit entity,
5 correct?

6 A That's correct.

7 Q So, Laguna Lakes doesn't earn any profits
8 from the use of the Laguna Lakes name or logo, does it?

9 A No, it does not.

10 Q As far as you know, is -- are the Laguna
11 Lakes name and logo being used in interstate commerce?

12 UNIDENTIFIED SPEAKER: Objection.

13 BY MR. BEHREN:

14 Q You can answer, sir.

15 A Well, I believe that there is plenty of
16 interstate commerce going on, maybe not in the
17 traditional way of making a profit; however, most of the
18 owners that live there came from another state and
19 another country.

20 Q Okay.

21 A So, that would be, just as you post --
22 showed a letter from me back and forth from New Jersey,
23 okay, that was somewhat of an interstate commerce.
24 That's continually going on, and things like that.
25 Other -- you know, as far as to sell things to make a

1 profit, no, but to --

2 Q Okay.

3 A -- obviously deal with our residents one
4 way or the other, yes.

5 Q And when people are coming in, though, to
6 Laguna Lakes, who are they actually buying the
7 properties from? They are not buying them from the
8 association, correct?

9 A No, they are not.

10 Q They are buying them from Realtors like --

11 A That's --

12 Q -- or through Realtors like Mr. Marino,
13 right?

14 A That's absolutely correct.

15 Q So, you would agree that the Laguna Lakes
16 Community Association's responsibilities are very
17 localized, it's to maintain the common areas in the
18 development, correct?

19 A It's actually more than that, but I will go
20 along with that, but there is more. I mean, we have a
21 fiduciary duty to protect all of the assets of the
22 community. And we personally, as the board, we believed
23 that the name and the logo was -- fell under that
24 protection, and that's all we are trying to do, is
25 protect the community.

1 Q Okay. But my question again is that the
2 operations of the association --

3 A Uh-huh.

4 Q -- are very localized. It's an association
5 that --

6 A That's correct.

7 Q -- operates to maintain an association in
8 Fort Myers, Florida, right?

9 A That's correct.

10 Q So, let me -- if we can go back now to the
11 binder of documents, I guess, that we gave you.

12 MR. BEHREN: If you want, we could -- I
13 guess we could mark the rest of this binder of
14 documents as -- well, I'm just -- we'll do -- I
15 was going to say try to mark it as a composite
16 exhibit to make it easier, but in the binder
17 there -- if you could show the witness the binder,
18 please.

19 MR. ANNUNZIATA: I'm showing him all the
20 documents that you have received, Scott --

21 MR. HARDERS: Okay.

22 MR. ANNUNZIATA: -- and Chad.

23 MR. HARDERS: And if we could just pause
24 momentarily when we are talking about specific
25 ones, I would be grateful.

1 MR. ANNUNZIATA: The first page of it starts
2 with a hosting history.

3 MR. HARDERS: Okay.

4 MR. ANNUNZIATA: All right? Just to give
5 you a, you know, frame of reference.

6 MR. HARDERS: Okay. We have got that one in
7 front of us. Thank you.

8 And is this -- we were going to mark them
9 one at a time or all together?

10 MR. BEHREN: I guess we'll mark them one --
11 I will go through and we'll mark them one at a
12 time.

13 MR. HARDERS: Okay.

14 MR. BEHREN: Some of these I don't know that
15 he's going to have any personal knowledge of, to
16 be honest.

17 BY MR. BEHREN:

18 Q Just going to the second page of this
19 document, the -- do you recognize that site, that
20 document at all?

21 A No.

22 Q The -- it would -- this would be a printout
23 of the LagunaLakes.com site operated by Transeastern.
24 You never saw that before?

25 A No.

1 UNIDENTIFIED SPEAKER: Are we marking this
2 one, or we're not sure yet?

3 MR. BEHREN: Well, if he doesn't recognize
4 it, there's, I guess, no point in -- in marking
5 it.

6 UNIDENTIFIED SPEAKER: Yeah, fair enough.
7 I'm comfortable with that.

8 BY MR. BEHREN:

9 Q All right. Let's go to -- there is a --
10 after a bunch of the different website printouts here,
11 there's something called Community Association, Inc.
12 board of director's meeting minutes from August 22nd,
13 2011.

14 A Okay.

15 UNIDENTIFIED SPEAKER: Can you just give us
16 one minute to find that one?

17 UNIDENTIFIED SPEAKER: It's the notes of a
18 board of director's meeting?

19 MR. ANNUNZIATA: It looks like a flyer for
20 one.

21 MR. BEHREN: No, no.

22 MR. ANNUNZIATA: No?

23 MR. MARINO: Minutes.

24 MR. BEHREN: It's minutes of a board of
25 director's meeting.

1 MR. ANNUNZIATA: Oh, approved minutes.

2 Yeah, I'm sorry, approved minutes.

3 UNIDENTIFIED SPEAKER: Approved minutes?

4 MR. ANNUNZIATA: Held on August 22nd, 2011.

5 It's after something -- there is a page 31 on it.

6 Hold on.

7 UNIDENTIFIED SPEAKER: It sounds -- I think
8 we have that, so we are going to just pull up our
9 copy of it and follow along that way.

10 MR. ANNUNZIATA: It's about 24 pages into
11 it, it's got the Laguna Lakes logo at the top.

12 UNIDENTIFIED SPEAKER: Is it marked with an
13 Exhibit 5, dash, bravo at the top?

14 MR. ANNUNZIATA: No.

15 UNIDENTIFIED SPEAKER: No? So, maybe that
16 was our -- our -- our marking.

17 (Off-the-record discussion.)

18 UNIDENTIFIED SPEAKER: Is it two pages long,
19 three pages?

20 MR. BEHREN: Yes.

21 MR. ANNUNZIATA: Three pages.

22 UNIDENTIFIED SPEAKER: I think I have got a
23 copy of it, so let's go -- I think just go ahead.

24 BY MR. BEHREN:

25 Q All right. Asking you about the approved

1 minutes from August 22nd of 2011. Present, I guess, at
2 the meeting was yourself, Ms. Flammang, Bob Hajicek,
3 Jeff Kelly, and Mary Ann Cowart, correct?

4 A Correct.

5 Q By the way, let me ask you another question.
6 In preparation for your deposition here today, did you
7 speak with anybody other than your counsel?

8 A No, I did not.

9 Q Have you spoken with any of the other board
10 members, such as Ms. Flammang, Hajicek, Kelly, or Cowart
11 with regard to your deposition in this case?

12 A No, I did not.

13 Q Have you spoken with any of these board
14 members regarding Mr. Marino's opposition to the
15 registration of this mark, since he -- since it was
16 filed?

17 A Have we spoken about it?

18 Q Yes.

19 A Of course, we spoke about it.

20 Q Okay. What have you guys discussed about
21 it?

22 A We have discussed the idea that we applied
23 for the trademark.

24 MR. ANNUNZIATA: Just to be clear, and I'm
25 sorry, who -- who -- who are you talking about?

1 Who -- who communicated with who?

2 MR. BEHREN: Discussions between Mr. Tardiff
3 and the fellow board members relating to the
4 opposition to the mark filed by us --

5 MR. ANNUNZIATA: Okay, I'm sorry. I thought
6 you --

7 MR. BEHREN: -- by Mr. Marino.

8 MR. ANNUNZIATA: -- I thought you were
9 referring to one particular person.

10 MR. BEHREN: Okay.

11 MR. ANNUNZIATA: Sorry. Go ahead.

12 UNIDENTIFIED SPEAKER: But we will have to
13 object briefly if the conversations were with the
14 current board member but also the attorney of
15 record, Donna Flammang.

16 BY MR. BEHREN:

17 Q So, who did you have discussions with about
18 Mr. Marino's opposition to their registration of the
19 trademark?

20 A Well, starting in the very beginning, we had
21 a discussion as to, do we go ahead with this or not, so
22 yes, we --

23 Q Where, at the board meeting?

24 A I would imagine at the board meeting,
25 singularly, walking through the neighborhood as we would

1 see each other, we would discuss certain -- different
2 things and whatnot. There are times where that probably
3 did come up.

4 Q Okay. Well, what was --

5 A Because it has --

6 Q -- what do you re --

7 A Because it has gone on for a very long time,
8 yes.

9 Q Just tell me what you recall about the
10 discussions you had with the fellow board members about
11 this opposition to the trademark or trademarks.

12 UNIDENTIFIED SPEAKER: Again, with the
13 exception of Attorney Donna Flammang.

14 THE WITNESS: Correct.

15 This -- the discussion really is more or
16 less about the idea of we are not quite certain
17 why this is being objected to, as the association,
18 this is clearly all up on everything that
19 identifies Laguna Lakes, and there is no other
20 entity outside that's had a problem with this, and
21 it comes from a fellow resident on the inside.

22 And like I said in this deposition, no one
23 has a problem with Mr. Laguna Lakes. What we do
24 have a problem with is Laguna Lakes and the emblem
25 to go with it and you represent yourself that

1 particular way, whether it's Mr. Marino or any
2 other person or entity.

3 BY MR. BEHREN:

4 Q Just to clarify something else, too,
5 Ms. Flammang, was she a board member, or was she the
6 board attorney?

7 A She is a board member and, for this
8 particular case, the board attorney.

9 Q Why is it that the board elected to use
10 Ms. Flammang as the board attorney -- I mean, as a -- as
11 the attorney when she was on the board? Why not find an
12 outside --

13 MR. ANNUNZIATA: Object.

14 Q -- law firm to represent them?

15 MR. ANNUNZIATA: Objection. I think you're
16 getting into attorney/client privilege.

17 MR. BEHREN: All right. I don't know that I
18 am, if it was discussed among board members at a
19 public meeting as to --

20 MR. ANNUNZIATA: With an attorney.

21 MR. BEHREN: Well, I don't know it was
22 discussed with an attorney.

23 BY MR. BEHREN:

24 Q Was Ms. Flammang wearing her attorney hat,
25 or was she wearing her board member hat at the time?

1 Tell me how it was that you all -- that the board
2 managed to utilize Ms. Flammang as the attorney for this
3 rather than some outside counsel.

4 A The reason that we chose Ms. Flammang was
5 that this was a -- really an application. We didn't
6 believe that there would be any objections. We didn't
7 believe -- we had no knowledge of anyone out there that
8 was utilizing it in that fashion, and we didn't believe
9 that there would be any opposition to it. So, it's
10 cheap enough, and Ms. Flammang had experience in this,
11 that the board decided to go the cheapest route
12 possible.

13 Q All right. Now, looking at the minutes here
14 of the meeting, it says here that, I guess, Ms. Cowart
15 made a motion.

16 Ms. Cowart is another Realtor, correct?

17 A Yes, she is.

18 Q She would be a competitor of Mr. Marino's,
19 correct?

20 A No.

21 UNIDENTIFIED SPEAKER: Objection.

22 BY MR. BEHREN:

23 Q Why not?

24 A She's --

25 UNIDENTIFIED SPEAKER: Continued.

1 But go ahead, if you know, Patrick.

2 THE WITNESS: She's not part of the -- she
3 practices over in -- in Sanibel Captiva only, as
4 far as -- to my knowledge, that's it.

5 BY MR. BEHREN:

6 Q Okay. So, you don't know whether or not
7 she's a competitor then of Mr. Marino's?

8 A I believe that she's a Realtor for those --
9 that specific area, that's it. So, unless Mr. Marino is
10 selling over there --

11 Q Is it true that -- did Mr. -- did Ms. Cowart
12 say something in this meeting about, if we get this mark
13 registered, then that means Gerard can't use it anymore?

14 UNIDENTIFIED SPEAKER: Objection.

15 THE WITNESS: I -- I really don't recall
16 specifically exactly what was said. However, I
17 knew -- I do know that when all of this was going
18 on, this was more about others, not just Marino.

19 BY MR. BEHREN:

20 Q With regard to -- it says here it was going
21 to be a cost of around \$2,700. Is that how much has
22 been paid on this trademark application by the
23 association?

24 A I --

25 MR. ANNUNZIATA: Object to the form, and --

1 and --

2 MR. BEHREN: Again, we got -- hold on a
3 second, hold on a second.

4 MR. ANNUNZIATA: Attorney/client privilege.

5 MR. BEHREN: No, no, no, no, no. I'm not --

6 MR. ANNUNZIATA: You can -- you can argue
7 all day long --

8 MR. BEHREN: I'm not going to have --

9 MR. ANNUNZIATA: -- I'm going to raise
10 attorney/client --

11 MR. BEHREN: I'm not going to have three
12 lawyers here making objections.

13 MR. ANNUNZIATA: But I'm going --

14 MR. BEHREN: Mr. Harders is on the phone, he
15 is perfectly capable of --

16 MR. ANNUNZIATA: And so am I.

17 MR. BEHREN: -- making objections that he
18 deems necessary.

19 MR. ANNUNZIATA: Okay. We can fight about
20 that all day long. I think you're getting into
21 the attorney/client --

22 MR. BEHREN: So I --

23 MR. ANNUNZIATA: -- privilege.

24 MR. BEHREN: Well, I -- I would disagree,
25 considering the fact that this would be a board

1 issue that would be public knowledge to all
2 members of the association.

3 BY MR. BEHREN:

4 Q So, my question is, have you all expended
5 approximately \$2,700 so far in the registration of these
6 trademarks?

7 UNIDENTIFIED SPEAKER: Objection.

8 And I'm going to instruct Patrick not to
9 answer on the basis of attorney/client privilege.

10 MR. BEHREN: How is it privileged?

11 BY MR. BEHREN:

12 Q Let me ask you this: Would the members of
13 the association be entitled to know how much was spent
14 on the -- on this particular trademark application thus
15 far? Would you agree that that would be information
16 that members are entitled to?

17 UNIDENTIFIED SPEAKER: I don't know.

18 MR. BEHREN: I'm asking the witness.

19 THE WITNESS: It -- to my knowledge, legal
20 matters are not public knowledge.

21 MR. MARINO: It's financial.

22 BY MR. BEHREN:

23 Q We are asking how much was spent, the
24 expenditures.

25 A To my knowledge, for legal, it's not public

1 knowledge, so it doesn't mean -- it has nothing to do
2 with that.

3 Q So, you all are saying that you don't -- you
4 won't let the association members know how much you all
5 have spent so far on this trademark application; would
6 that be a correct statement?

7 UNIDENTIFIED SPEAKER: Object.

8 Patrick, if you know the answer to this, I
9 mean, go ahead.

10 THE WITNESS: The specific amount I do not
11 know. I do know that we have gone above \$2,700.

12 BY MR. BEHREN:

13 Q Okay. How about approximately? Do you know
14 approximately how much has been spent so far in the --

15 UNIDENTIFIED SPEAKER: Objection.

16 Q -- prosecution of these trademarks?

17 (Off-the-record discussion.)

18 MR. ANNUNZIATA: Every lawyer has objected
19 on the defense -- on the defense side as to the
20 attorney/client privilege.

21 BY MR. BEHREN:

22 Q Approximately, do you know?

23 MR. ANNUNZIATA: Instructing him not to
24 answer.

25

1 BY MR. BEHREN:

2 Q Okay, sir. Don't you think -- you said you
3 owe a fiduciary duty to members of the association,
4 right?

5 A Yes.

6 Q Don't you think it would be a fiduciary
7 obligation of yours to allow the members to know how
8 much the association has spent on trying to prosecute
9 these particular trademark applications?

10 UNIDENTIFIED SPEAKER: Objection. You're
11 harassing now. He has answered the question.

12 We --

13 MR. BEHREN: Harassing?

14 MR. ANNUNZIATA: We -- we --

15 UNIDENTIFIED SPEAKER: -- (inaudible) on the
16 basis of attorney/client privilege.

17 MR. BEHREN: Okay. Well, this is -- I'm
18 going to ask the question. If you want to claim
19 that's attorney/client privilege and instruct him
20 not to answer, that's your prerogative.

21 Can you read back --

22 UNIDENTIFIED SPEAKER: We don't want you to
23 continue to harass --

24 MR. BEHREN: I'm sorry?

25 UNIDENTIFIED SPEAKER: -- the witness, who's

1 (inaudible) --

2 MR. ANNUNZIATA: Please get his last
3 statement on the record.

4 (Off-the-record discussion.)

5 MR. HARDERS: Attorney Harders has said that
6 I object to the continued harassment of the
7 witness, who has answered this question, on -- on
8 counsel's advice, not answer, based on
9 attorney/client privilege, and request that we
10 move on.

11 MR. BEHREN: That wasn't my last question,
12 though.

13 BY MR. BEHREN:

14 Q My last question, sir, was you conceded and
15 testified, I believe, before that it -- that you believe
16 you have a fiduciary obligation to the interests of the
17 master association, right?

18 UNIDENTIFIED SPEAKER: Object, asked and
19 answered.

20 BY MR. BEHREN:

21 Q Okay. So, my question is, do you believe
22 that, having a fiduciary obligation to the master
23 association, that the members of the association should
24 be entitled to know what's being spent on this trademark
25 application?

1 UNIDENTIFIED SPEAKER: Object, legal
2 conclusion.

3 BY MR. BEHREN:

4 Q You can answer the question, sir, unless he
5 tells you not to answer it.

6 UNIDENTIFIED SPEAKER: You can go ahead and
7 answer that. Not the amount, but do you think
8 that you have an obligation to let the members
9 know the cost?

10 MR. BEHREN: Well, that wasn't -- I don't
11 think that was really my question.

12 UNIDENTIFIED SPEAKER: (Inaudible) Court
13 reporter please repeat the question.

14 (Off-the-record discussion.)

15 (Portion of the record read back by the
16 court reporter.)

17 UNIDENTIFIED SPEAKER: Patrick, you can
18 answer that.

19 THE WITNESS: Okay.

20 UNIDENTIFIED SPEAKER: It's phrased as a yes
21 or no, I suppose.

22 THE WITNESS: Yes. Do I believe they
23 should? Yes, I believe they should; however, I
24 have been told --

25 MR. ANNUNZIATA: Object to -- instruct

1 you --

2 THE WITNESS: Not --

3 MR. ANNUNZIATA: -- not to answer --

4 THE WITNESS: Okay.

5 MR. ANNUNZIATA: -- based on the
6 attorney/client privilege.

7 THE WITNESS: All right.

8 MR. ANNUNZIATA: All right?

9 THE WITNESS: Okay.

10 BY MR. BEHREN:

11 Q All right. So, let's flip now to a couple
12 more pages down here, which would be the TS plus
13 application dated September 2nd, 2011, serial number
14 85414343. And it would be four pages.

15 UNIDENTIFIED SPEAKER: Thank you. And is
16 this going to be the next exhibit?

17 MR. BEHREN: Yeah, we can mark this as the
18 next exhibit, which will be exhibit --

19 MR. MARINO: This one over here?

20 MR. BEHREN: What are we up to, D?

21 MR. MARINO: Right.

22 MR. BEHREN: Well, actually, let me --
23 let's -- let me just clarify then. I think I had
24 A, B, C. We are going to mark these minutes,
25 we'll mark them as Exhibit D.

1 THE WITNESS: You already had a D.

2 (Off-the-record discussion.)

3 MR. BEHREN: So, Exhibit F will be the board
4 of director meeting minutes from August 22nd,
5 2011.

6 (Deposition Exhibit F was marked for
7 identification.)

8 (Off-the-record discussion.)

9 MR. BEHREN: And then Exhibit G I want to be
10 this application for the logo.

11 MR. ANNUNZIATA: Do you have that, Scott?

12 MR. HARDERS: I do, thank you.

13 MR. ANNUNZIATA: All right.

14 (Deposition Exhibit G was marked for
15 identification.)

16 MR. BEHREN: I will give it to you, so -- I
17 mean, I don't need it for right now, but just so
18 we have the full set of exhibits when she -- when
19 we do the transcript.

20 BY MR. BEHREN:

21 Q All right. So, you recognize this document,
22 sir?

23 A I believe I have seen it before.

24 Q Okay. Isn't it true that this would be the
25 application for the trademark on the Laguna Lakes logo?

1 A Yes.

2 Q And on the third page of this document, it
3 says first use anywhere, at least as early as October
4 6th, 2003.

5 Do you know -- where did that date come
6 from, October 6th, 2003?

7 A I believe at that time, when this was going
8 through, that there was a second application to the
9 county at -- at that date. The first one was in
10 September of '03, and I believe the second one was
11 August of '03. And I am guessing that that was the
12 first one that came up, and that's why it was used that
13 particular way.

14 Q So you -- but you're not sure? You don't
15 have knowledge, then, of where this October 6th, 2003
16 first-use-anywhere date came from, correct?

17 A I'm -- I am -- I remember talking about the
18 date, I just don't specifically remember exactly what
19 that date was.

20 Q Who did you talk with the date about?

21 A My attorney.

22 Q Who, Ms. Flammang?

23 A Yes.

24 Q Would Ms. Flammang then be the person who
25 would have the most knowledge as to when this -- where

1 this October 6th, 2003 first-use-anywhere date came
2 from?

3 UNIDENTIFIED SPEAKER: Object.

4 MR. ANNUNZIATA: Object to the form.

5 UNIDENTIFIED SPEAKER: You can go ahead and
6 answer.

7 THE WITNESS: I would imagine that she
8 probably would know more than I, yes.

9 BY MR. BEHREN:

10 Q On this -- also there is a specimen here, it
11 says web -- webpage of Laguna Lakes Community
12 Association, Inc.

13 A Uh-huh.

14 Q So, would you -- would you agree that the
15 specimen of the logo came from the
16 LagunaLakesCommunityAssociation.com webpage?

17 MR. ANNUNZIATA: What are you showing --

18 THE WITNESS: That's the --

19 MR. BEHREN: Oh, we already went through it
20 as part --

21 MR. ANNUNZIATA: Showing --

22 MR. BEHREN: -- of your --

23 MR. ANNUNZIATA: -- the web page --

24 MR. BEHREN: -- production, too.

25 THE WITNESS: Right.

1 MR. ANNUNZIATA: He's showing him the
2 webpage, Scott.

3 MR. BEHREN: I'm showing him the webpage.

4 MR. ANNUNZIATA: A photocopy of the webpage.

5 THE WITNESS: Yeah, a photocopy.

6 I would generally have to say yes.

7 BY MR. BEHREN:

8 Q And you would agree that this
9 LagunaLakesCommunityAssociation.com website wasn't set
10 up until 2006, correct?

11 A I am -- I -- I still don't have exact
12 remembrance of an exact date of when that website was
13 brought forward.

14 Q And you don't -- who would have the most
15 knowledge as to when it was that the
16 LagunaLakesCommunityAssociation.com website was set up?

17 A I couldn't tell you. I honestly couldn't
18 tell you.

19 I would imagine -- I can't even say that --
20 to go to Alliant Property Management, because I don't
21 believe that they were the management company at that
22 time, so --

23 Q Would you -- would you -- did you bother --
24 would you have looked on the -- have you ever looked at
25 the history of the domain name to see when it was first

1 purchased or acquired by Laguna Lakes?

2 A No, I have not.

3 Q Going back to --

4 MR. BEHREN: Can you give me that document?

5 MR. MARINO: Uh-huh.

6 MR. BEHREN: We'll mark that one as an
7 exhibit, too.

8 MR. MARINO: Absolutely.

9 MR. ANNUNZIATA: Marking the whole
10 application --

11 MR. BEHREN: No.

12 MR. ANNUNZIATA: -- and attachment?

13 MR. BEHREN: We already marked the -- we are
14 going to mark the application as G, I already said
15 that.

16 MR. MARINO: Uh-huh.

17 MR. BEHREN: We are going to mark as Exhibit
18 H this next document.

19 (Deposition Exhibit H was marked for
20 identification.)

21 MR. BEHREN: Which is part of the big
22 composite binder of documents here.

23 MR. ANNUNZIATA: Which one is it?

24 MR. BEHREN: It's -- it's a printout, I
25 guess, of the -- the who-is information for Laguna

1 Lakes --

2 MR. ANNUNZIATA: Let me take a look at it,
3 please.

4 MR. BEHREN: -- Association.com.

5 MR. ANNUNZIATA: I haven't been able to get
6 to it yet.

7 MR. MARINO: About 20 pages in.

8 MR. BEHREN: I just -- I just gave it to
9 him.

10 MR. ANNUNZIATA: Right. And I pulled it
11 over --

12 MR. BEHREN: Oh.

13 MR. ANNUNZIATA: -- here for a second,
14 because I'm trying to match it and see it, and
15 also make sure they can see it. Can you -- do you
16 guys know what he's talking about?

17 UNIDENTIFIED SPEAKER: I heard it was who-is
18 information for -- what was the website?

19 MR. ANNUNZIATA: It starts at the top, it
20 says domain name, LagunaLakesAssociation.com,
21 register, and has all these -- it says register
22 URL, GoDaddy, updated date, creation date,
23 registered expiration date, registrar.

24 UNIDENTIFIED SPEAKER: Is there a call-out
25 box with an arrow?

1 MR. ANNUNZIATA: Yeah. It says created
2 8-24-2006.

3 UNIDENTIFIED SPEAKER: I see it. Thank you.

4 MR. ANNUNZIATA: Okay. And it's got a whole
5 long line, and then the little -- it looks like
6 GoDaddy.com.

7 UNIDENTIFIED SPEAKER: H?

8 MR. ANNUNZIATA: That's H.

9 UNIDENTIFIED SPEAKER: Thank you.

10 MR. ANNUNZIATA: Thank you.

11 MR. MARINO: He's got it.

12 MR. BEHREN: Huh?

13 MR. MARINO: He's got it.

14 MR. BEHREN: Yeah.

15 MR. ANNUNZIATA: He's got it.

16 BY MR. BEHREN:

17 Q Would this document at all help to refresh
18 your recollection about when LagunaLakesAssociation.com
19 was first set up online by the Laguna Lakes Community
20 Association, Inc.?

21 A Yes.

22 Q When would that have been?

23 A It says here created 8-24-2006.

24 Q So, the -- the specimen to your application
25 for the logo was actually apparently used for the first

1 time in August of 2006, correct?

2 A Correct.

3 Q Also on the -- on the --

4 MR. BEHREN: Can you give me the second part
5 of the application, with the disclaimer
6 information, please?

7 Actually, this should all be part of, I
8 guess, the same thing, now that I think about it.
9 This is all part -- going to be still part of
10 Exhibit G.

11 Flipping -- yeah, flipping on to the
12 remainder of Exhibit G there, you'll see here
13 where it says to the commissioner of -- for
14 trademarks.

15 MR. ANNUNZIATA: So, it's not H, now it's G,
16 or --

17 MR. BEHREN: Well, H is the GoDaddy thing I
18 just showed.

19 MR. ANNUNZIATA: Right.

20 MR. BEHREN: The prior exhibit was G, which
21 is the application for the logo.

22 MR. ANNUNZIATA: Okay.

23 MR. BEHREN: Okay? What I am asking about
24 is there is -- there is these pages that have the
25 various blocks, and then there is something

1 called, to the commissioner for trademarks.

2 THE WITNESS: Do you have -- did you --

3 MR. ANNUNZIATA: It's right here.

4 THE WITNESS: I know where we have it here,
5 but he doesn't have one.

6 MR. ANNUNZIATA: Marked -- he hasn't marked
7 it yet.

8 THE WITNESS: Yeah. Okay, that's fine.

9 MR. ANNUNZIATA: We don't have it marked G
10 in this stack here.

11 THE WITNESS: Yeah.

12 MR. MARINO: This is all --

13 THE WITNESS: That's fine.

14 MR. BEHREN: Now it's all marked as G in the
15 stack.

16 THE WITNESS: Okay. I just --

17 MR. ANNUNZIATA: You guys have that?

18 UNIDENTIFIED SPEAKER: We have it. Thank
19 you.

20 MR. ANNUNZIATA: All right.

21 THE WITNESS: Okay. All right. So, we are
22 back to this now? Is that where we're at, G?

23 MR. ANNUNZIATA: Yeah.

24 MR. BEHREN: Right, G.

25

1 BY MR. BEHREN:

2 Q And where it says here commission -- to the
3 commissioner for trademarks, and the next page in, I
4 guess it has here applicant's website address is
5 www.LagunaLakesAssociation.com, and then it has Donna
6 Flammang, correct? You see that?

7 A I'm trying to get there.

8 Q I believe --

9 MR. ANNUNZIATA: Where are you looking at?

10 I don't --

11 MR. BEHREN: The page after, where it says
12 to the commissioner for trademarks.

13 MR. ANNUNZIATA: Uh-huh.

14 THE WITNESS: Okay, yes.

15 BY MR. BEHREN:

16 Q Okay. And then it has a declaration in
17 here, too, right?

18 A Uh-huh.

19 Q It says that all false statements and the
20 like so made are punishable by fine or imprisonment or
21 both, correct?

22 A Yes, it says that.

23 Q And it says, I guess, the applicant believes
24 the -- applicant believes to be the owner of the
25 trademark, service mark, sought to be registered,

1 correct?

2 A Yes.

3 Q And you also -- it was also certified here
4 that no other person, firm, corporation, or association
5 has the right to use the mark in commerce, right?

6 A That's correct.

7 Q Why was Mr. Marino not listed there as
8 somebody who had been using the mark in commerce?

9 A I have no idea.

10 Q Why was Transeastern not indicated as
11 somebody else who --

12 A Transeastern --

13 Q -- had the right to use the mark in
14 commerce?

15 A Because TransEastern went bankrupt.

16 Q Well, Transeastern went in -- then was
17 merged with TOUSA, right?

18 A Yeah.

19 Q TOUSA went into bankruptcy, right?

20 A Yeah.

21 Q That bankruptcy is still open, correct?

22 UNIDENTIFIED SPEAKER: Object. I mean, who
23 knows?

24 MR. BEHREN: I can -- I can tell you for a
25 fact that it's still open and active over in the

1 Southern District of Florida, in Fort Lauderdale,
2 so --

3 MR. HARDERS: Object to --

4 BY MR. BEHREN:

5 Q Why did you not disclose that TOUSA was a --
6 somebody who had the right to use the mark in commerce?

7 MR. ANNUNZIATA: Sorry, he had an objection.

8 Scott, you had -- you were stating an
9 objection, I don't think it got on the record.

10 MR. HARDERS: No, I did object.

11 MR. ANNUNZIATA: You want to restate it, so
12 she can get it?

13 MR. HARDERS: Yes. I object to the -- to
14 the last question. I'll just leave it at that,
15 and -- but the witness can answer.

16 MR. ANNUNZIATA: Okay.

17 THE WITNESS: Okay. What was that question
18 again, so that I can --

19 MR. BEHREN: Can you read back --

20 THE WITNESS: -- refresh what we're asking?

21 MR. BEHREN: -- the last question?

22 Can you read back the last question for me,
23 please?

24 (Off-the-record discussion.)

25 (Portion of the record read back by the

1 court reporter.)

2 UNIDENTIFIED SPEAKER: That was the one that
3 was objected to.

4 THE WITNESS: I have no idea why it would be
5 or would be not be on there.

6 BY MR. BEHREN:

7 Q Okay. And where it says here, too, that all
8 the statements in here are true and are believed to be
9 true, you don't have any knowledge of whether or not any
10 of the statements in this application are true or
11 believed to be true, correct?

12 A I would actually have to go over step by
13 step before I actually answered something like that.

14 Q Let me ask you this: Would it -- would
15 you -- would it be a fair statement that the person who
16 would have the most knowledge as to what was put in this
17 application and why would have been -- would be
18 Ms. Flammang?

19 A She has the most knowledge of what went into
20 the -- because she actually put the application
21 together.

22 Q You, as the association president, didn't
23 tell Ms. Flammang what to put in this application,
24 Ms. Flammang --

25 UNIDENTIFIED SPEAKER: Object.

1 Q -- put it in there herself, correct?

2 MR. ANNUNZIATA: Object, and instruct --

3 UNIDENTIFIED SPEAKER: And we're not --

4 don't answer that one, please.

5 MR. ANNUNZIATA: Instructing you not to
6 answer that, based on attorney/client privilege.

7 BY MR. BEHREN:

8 Q As the president of the association, did you
9 review this application, Exhibit G, before it was
10 submitted by Ms. Flammang, to make sure it was truthful
11 and accurate?

12 A I did review it, yes.

13 Q And did you indicate to her that anything in
14 it was inaccurate?

15 UNIDENTIFIED SPEAKER: Object. Don't
16 answer, please.

17 MR. ANNUNZIATA: Based on attorney/client
18 privilege.

19 BY MR. BEHREN:

20 Q Did the board approve the application before
21 submitting it to the trademark office?

22 A I am -- I believe they did. I mean,
23 everything is always a board -- it's always the board
24 that answers everything, so I would have to say yes.

25 But the reality is I don't remember one way or the

1 other.

2 Q Would there have been board minute meetings
3 based -- for the review and approval of those, of this
4 application?

5 A If it was done in a meeting, there would
6 be -- it would be on there.

7 Q Well, would it have been done in a meeting?

8 A Based on it being legal, no, not
9 necessarily.

10 Q You don't know?

11 A No. Based on the idea that this is all
12 legal stuff, legal stuff is not public knowledge.

13 Q So, you would have had separate meetings
14 relating to this stuff; is that what you --

15 A I don't believe that there was a separate
16 meeting. I believe that we each individually got a copy
17 of it and looked at it.

18 (Deposition Exhibit I was marked for
19 identification.)

20 BY MR. BEHREN:

21 Q Okay. Let me show you what's been -- what
22 I'm marking as Exhibit I, which would be the application
23 for the mark for the name Laguna Lakes. Do you
24 recognize this document?

25 A I believe I do.

1 Q And if you look at the second page of
2 Exhibit I, and you see here on the second page where it
3 says your -- it has -- the first page has Laguna Lakes
4 Community Association, Inc., and then you see here where
5 it says website address --

6 A Uh-huh.

7 Q -- www.LagunaLakes.com?

8 A Yes.

9 Q You would agree that the Laguna Lakes
10 Community Association has never owned LagunaLakes.com,
11 correct?

12 A Correct.

13 Q So, that would be a -- completely inaccurate
14 information contained here in this application, correct?

15 A I would say it was a typo, yes.

16 Q Why would you say it's a typo?

17 A Because right down here it says
18 www.LagunaLakesAssociation.com.

19 Q Okay. But that -- and that was used for --
20 to cite to the specimen; in other words, where the --
21 where the proof of the applied-for mark came from,
22 right?

23 A Right.

24 Q And that, we already talked about, wasn't
25 set up until August of 2006, correct?

1 A Correct.

2 Q And also the first use in anywhere date says
3 October 6th, 2003. You don't have personal knowledge as
4 to where -- what that date came from, correct?

5 A As I stated before, I believe that it was a
6 second registered mark, that Transeastern had went down
7 to the county and --

8 Q But you -- but you don't know, right?

9 A No.

10 Q I think you testified --

11 A Yeah, I --

12 Q -- you were the person who would have the
13 most --

14 A That's what I believe it is, but I cannot
15 remember specifically.

16 Q I believe -- and you testified, I think,
17 before that you believe the person who would have the
18 most knowledge as to where that date came from would be
19 Ms. Flammang, right?

20 UNIDENTIFIED SPEAKER: Objection.

21 Go ahead and answer.

22 THE WITNESS: Correct.

23 MR. MARINO: Scott, can I see you for a
24 second?

25 MR. BEHREN: Yeah.

1 (A brief recess was taken.)

2 BY MR. BEHREN:

3 Q So, referring again to Exhibit I, you're
4 seeking to obtain a trademark on the name Laguna Lakes?

5 A Yes.

6 Q Is it your contention that no one else is
7 allowed to use the name Laguna Lakes?

8 UNIDENTIFIED SPEAKER: Objection.

9 Go ahead, Patrick, if you -- if you can
10 answer.

11 THE WITNESS: It's my contention that, as a
12 registered mark, people can use it if they gain
13 permission somehow, someway, correct?

14 MR. BEHREN: I'm not answering the questions
15 here.

16 THE WITNESS: Okay.

17 MR. BEHREN: My question is --

18 THE WITNESS: My --

19 BY MR. BEHREN:

20 Q -- are you all seeking to prevent anybody
21 from using the name Laguna Lakes?

22 A No.

23 Q Okay. You're aware that there is other
24 developments in West Palm Beach, in California, around
25 the country, all that are -- developments that are all

1 called Laguna Lakes, right?

2 A Correct.

3 UNIDENTIFIED SPEAKER: Objection.

4 THE WITNESS: I --

5 BY MR. BEHREN:

6 Q Are you aware also that, in fact, the Laguna
7 Lakes in Florida is actually based on a Laguna Lakes out
8 in California?

9 UNIDENTIFIED SPEAKER: Objection.

10 THE WITNESS: Couldn't tell you.

11 BY MR. BEHREN:

12 Q And with regard to -- you said that there
13 was an issue with regard to the Mr. -- with regard to
14 Mr. Marino's use of the logo. What if Mr. Marino took
15 pictures of the signs to the development, would you
16 consider that to be violating your proposed trademark?

17 UNIDENTIFIED SPEAKER: Objection.

18 You can answer, Patrick, if you know.

19 THE WITNESS: Pictures of a sign are one
20 thing. Actually printing a logo with the name
21 Laguna Lakes on it is actually representation of
22 the association of which is --

23 MR. BEHREN: So --

24 THE WITNESS: -- not.

25 MR. BEHREN: Go ahead.

1 BY MR. BEHREN:

2 Q So, it's your -- it's your contention, at
3 least it is your belief, that Mr. Marino's use of a
4 picture of the signs or the front gate to Laguna Beach
5 would not necessarily be objectionable to the board; is
6 that correct?

7 UNIDENTIFIED SPEAKER: Objection.

8 BY MR. BEHREN:

9 Q You can answer.

10 A I can answer for the -- the board sitting
11 right now that I believe objection would be held -- when
12 you -- you have the signs of a -- with the logo and the
13 name, it presents a problem. If you have a picture of
14 the front sign, that's not actually a problem.

15 Q By the way, the -- the front signs to the
16 development, do you know -- do you know when those were
17 erected?

18 A I believe it was somewhere in the middle of
19 '03. I don't have an exact date.

20 Q So, you don't know?

21 A No, but I -- the best of my knowledge, it
22 was somewhere in the middle of '03.

23 Q What do you base that on?

24 A Speaking with other residents that were here
25 previous to myself.

1 Q Okay. So, your knowledge of when the signs
2 were erected is based on hearsay --

3 A Correct.

4 Q -- relayed to you from third parties?

5 A That's it.

6 Q Are you aware of whether or not there's
7 actually a natural -- actually lakes out in California
8 called Laguna Lakes?

9 A Am I aware of that?

10 Q Yeah.

11 A No.

12 (Deposition Exhibit J was marked for
13 identification.)

14 MR. BEHREN: We'll mark this document as
15 Exhibit J.

16 UNIDENTIFIED SPEAKER: If you could just
17 help us find it.

18 MR. ANNUNZIATA: You're not going to be able
19 to find it.

20 MR. BEHREN: It's original marketing
21 materials.

22 MR. ANNUNZIATA: It's original marketing
23 materials from Transeastern.

24 I have a phone -- I have a camera. I'm
25 going to take a picture of it and send it to you.

1 UNIDENTIFIED SPEAKER: Okay. That would be
2 helpful. Thank you.

3 MR. ANNUNZIATA: I mean, as needed, you
4 know, and you can look at it as you go.

5 If there's anything in particular, I ask
6 that you give me a moment to send it to them,
7 so --

8 Go ahead.

9 MR. BEHREN: Okay.

10 BY MR. BEHREN:

11 Q With regard to that particular
12 documentation, Exhibit J there, you would agree that --
13 if you'd open up the cover there -- keep going, keep
14 going. There.

15 You would agree that it references the
16 attempting to create the California lifestyle, correct?

17 A Correct.

18 Q And, in fact, all of the little parcels were
19 all named after areas in California, too, like Beverly
20 Hills, Santa Barbara, Monterey, right?

21 A That's correct.

22 MR. ANNUNZIATA: It's coming to you, Scott.

23 MR. HARDERS: Not yet.

24 BY MR. BEHREN:

25 Q You would agree -- you would admit also that

1 Laguna Lakes Community Association is not licensed to
2 broker or sell real estate, correct?

3 A That's correct.

4 Q They are also not licensed to broker or
5 lease real estate, correct?

6 A That's correct.

7 Q And you would agree that the primary source
8 of revenue for the Laguna Lakes Community Association
9 are homeowners' association fees?

10 A That's correct.

11 Q That would be, I'm assuming, the only source
12 of revenues, correct? That maybe and rental of the
13 clubhouse?

14 A And rental of the clubhouse.

15 Q You would admit that Gerard Marino's use of
16 the name and logo doesn't impact Laguna Lakes Community
17 Association's revenues whatsoever?

18 A It hasn't to date; it has the capability of
19 doing so.

20 Q How?

21 A Let's say that Mr. Marino upsets someone
22 that he is doing business with, a client, so to speak,
23 and this client comes back to us and starts to sue him
24 and us, as a representative of, we -- simply we are
25 trying to protect the assets of that.

1 Q And you -- you would agree that for years
2 prior to filing the trademark applications, that
3 Mr. Marino and other Realtors had been using the name
4 Laguna Lakes and the logo, correct?

5 A Not the logo, no.

6 And I'm not really that aware of how many
7 years previous, but I do know that once we started
8 seeing many other Realtors use it, you know, a few other
9 using it and whatnot, that's when we talked about the
10 idea of doing something about that to stop it, because
11 it was just gaining and growing.

12 Q With regard to the -- one second.

13 With regard to the approved minutes that
14 were marked previously as Exhibit F --

15 A Yes.

16 Q -- is it true that those were posted on the
17 Laguna Lakes website at one point in time and then
18 removed from them?

19 A No.

20 Q Are they still on there today?

21 A To my knowledge, they are.

22 MR. MARINO: If I opened the website, can he
23 look?

24 MR. BEHREN: What's that?

25 MR. MARINO: If I opened the website, can he

1 look?

2 THE WITNESS: Go ahead.

3 MR. BEHREN: Pull it up and see.

4 BY MR. BEHREN:

5 Q Would you agree that -- and you would agree
6 that Mary Ann Cowart is a licensed Florida real estate
7 agent who lives in Laguna Lakes and was on the board,
8 right?

9 A Yes.

10 UNIDENTIFIED SPEAKER: Objection.

11 THE WITNESS: Sorry.

12 BY MR. BEHREN:

13 Q Is there a Laguna Lakes discussion board,
14 that there used to be at some point in time?

15 A Yes, there was.

16 Q Where was that? Was that on the website?

17 A That was on the website.

18 Q Are you aware of whether or not Ms. Cowart
19 was continuously criticizing Mr. Marino and posting
20 negative comments about him on the discussion board?

21 UNIDENTIFIED SPEAKER: Object.

22 But go ahead and answer, if you know,
23 Patrick.

24 THE WITNESS: I really don't know, but I do
25 know that it was taken down by a previous board,

1 and more or less it was -- the comments were --
2 and I don't know if it was Mary Ann or not, but
3 the comments were nasty, going back and forth
4 between the board and the residents.

5 BY MR. BEHREN:

6 Q And what about with regard to -- with regard
7 to these applications for the trademarks --

8 (Off-the-record discussion.)

9 MR. BEHREN: Well, that -- he's going to --
10 he's going to ask -- we're going to ask the
11 witness to take a look at the Laguna Lakes website
12 and see whether or not the minutes that I -- I
13 think were -- I just set forth were Exhibit H, are
14 actually still on the website. I'm sorry, not
15 Exhibit H, Exhibit F.

16 THE WITNESS: F.

17 MR. BEHREN: Sorry.

18 UNIDENTIFIED SPEAKER: Question?

19 THE WITNESS: So, you're asking me to go in
20 here, is --

21 MR. BEHREN: Yeah.

22 THE WITNESS: -- that what you --

23 MR. BEHREN: See if the minutes are still on
24 the website, or --

25 MR. ANNUNZIATA: Do you have --

1 MR. BEHREN: -- because you thought they --
2 you thought they were still on --

3 (Overlapping discussion.)

4 MR. ANNUNZIATA: -- passwords or anything of
5 yours --

6 THE WITNESS: No.

7 MR. ANNUNZIATA: -- on here?

8 MR. MARINO: He's --

9 THE WITNESS: He's logged in already.

10 MR. BEHREN: As long as he's already logged
11 in.

12 THE WITNESS: Yeah, he's logged in already.

13 MR. ANNUNZIATA: All right.

14 MR. BEHREN: All right.

15 MR. ANNUNZIATA: What was the -- what was
16 the date on this?

17 THE WITNESS: August --

18 MR. ANNUNZIATA: August --

19 THE WITNESS: -- 12th.

20 MR. ANNUNZIATA: -- 22nd, 2011.

21 THE WITNESS: '11, yeah.

22 MR. BEHREN: I'm sorry?

23 THE WITNESS: No, it's --

24 BY MR. BEHREN:

25 Q It's not on there?

1 A I'm not seeing -- I'm not seeing it. They
2 should all be on here. They were all on here.

3 Q Any idea why somebody would have removed
4 these particular minutes from the website?

5 A Well, it's not like they -- you're making it
6 something it's not.

7 There is -- every one was put on here from
8 the beginning of 2006, and right now I'm seeing there is
9 a lot missing, a lot.

10 And as I stated earlier, I don't go on this
11 very often, and --

12 Q But this one -- this particular meeting is
13 missing, correct?

14 A This and many, actually, yeah. All of '10
15 except for one, all of '11 except for one, all of --
16 well, one, two -- all of '12 except for two of them,
17 none of '09, none of '08. They were all on there. So,
18 exactly where that all has gone to, I don't know.

19 Q Would you --

20 A I would have to -- I would have to contact
21 who was effectively taking care of that website in order
22 to take it any further.

23 Q Would you agree, as the president of the
24 association, that you would have a fiduciary
25 responsibility to make sure that the members have access

1 to the minutes and know what was discussed at these
2 board member meetings?

3 A Yeah. They can call Alliant Property
4 Management at any time and get stuff.

5 Q Was there ever, in 2012, a board meeting
6 where members questioned the benefit of proceeding
7 forward with this trademark application?

8 A Could you repeat that question?

9 Q Was there ever a board meeting --

10 A Uh-huh.

11 Q -- where members of the association
12 questioned the benefit of proceeding forward with these
13 trademark applications?

14 A There was a couple of residents who
15 questioned, yeah.

16 Q Who was that? And tell me about that.

17 A I don't remember their names specifically.
18 I know his first name -- the one guy was Jeff, and I
19 can't remember the other woman's name.

20 But they asked -- they were members of a
21 Monterey parcel, of which they had a problem with Donna
22 being the representative. And that was their sole goal,
23 and that was it.

24 Q They had a problem with Donna being the
25 lawyer?

1 A Correct.

2 Q Okay. And what was discussed and what was
3 addressed about that issue?

4 A Well, the only thing that was discussed,
5 again, was the price, of which was stated the \$2,700,
6 and we stated that it was not -- it didn't come close to
7 doing that.

8 Q Did you tell them at the board how much --
9 at that board meeting where they complained about this
10 process, how much it was that had been spent to date?

11 A No.

12 Q Other than that it was in excess of the
13 \$2,700?

14 A It was less than, yes.

15 Q Oh, it was --

16 A It was less than.

17 Q Less than the \$2,700?

18 A Correct.

19 Q Was --

20 A We were in the very beginnings of actually
21 doing this when that, what you're talking about --

22 Q I got you.

23 A -- came in.

24 Q Do you recall at some point in time Mary Ann
25 Cowart standing up during one of those meetings when

1 they said why are we doing this, and her response was so
2 that Gerard Marino can't use it?

3 UNIDENTIFIED SPEAKER: Object.

4 THE WITNESS: No, I don't remember that
5 statement being said.

6 BY MR. BEHREN:

7 Q In the years that Mr. Marino has sold in
8 Laguna Lakes, has there been one complaint about his
9 selling of properties there, or has it in any way, any
10 of his -- in his years of selling there, has it somehow
11 affected the goodwill or name of the community?

12 A To my knowledge, I would have to say no, but
13 that's only my knowledge.

14 Q I understand.

15 A There's 614 units in there. There is a lot
16 of people that could say something different. Couldn't
17 tell you one way or the other.

18 Q Okay. We had asked you also to produce any
19 and all documents showing persons who had confusion,
20 suspicion, mistake, deception, or doubt as to the
21 relationship between -- between plaintiff and defendant
22 or plaintiff and defendant's products associated with
23 the mark Laguna Lakes. You don't have any documentation
24 to that effect, or do you? In other words --

25 MR. ANNUNZIATA: What --

1 BY MR. BEHREN:

2 Q Is there any documentation from anybody
3 expressing some confusion about the affiliation of
4 Mr. Marino with Laguna Lakes?

5 A I don't believe there is.

6 Q So, that would be request number 11 of the
7 request for production. You're saying there's no
8 responsive documents?

9 In addition, we had asked for all annual
10 sales figures of each product sold or distributed by you
11 in connection with the mark Laguna Lakes, or otherwise
12 sold or distributed by you under the mark Laguna Lakes
13 since January 2006. Do you have any documents to --
14 that would be responsive to that request?

15 A We didn't sell anything.

16 Q Okay. So, then, the answer to -- that was
17 request for production number 15. Would the response
18 then be that you have no responsive documents?

19 A I would imagine.

20 Q We also asked for all documents tending to
21 show any likelihood of confusion between Mr. Marino's
22 use of the name Mr. Laguna Lakes and your proposed use
23 of the mark Laguna Lakes. I think you already testified
24 there wouldn't be any documents to evidence that one way
25 or the other, correct?

1 A No.

2 Q So -- so, the response to number 16 should
3 be no responsive documents; would that be a fair
4 statement?

5 A Sure.

6 Q Number 20, I asked for all documents showing
7 the annual advertising and commercial expenditures for
8 you for each product sold under the name Laguna Lakes,
9 or in connection with the trademark Laguna Lakes. It
10 says that responsive documents will be produced. Are
11 there any responsive documents?

12 A No.

13 Q So, the response to number 20 should be
14 none?

15 A (Witness shrugging shoulders.) No. It's
16 to --

17 MR. ANNUNZIATA: You need to review what
18 was -- what was already --

19 THE WITNESS: Well, every question so far
20 that he's asking me about is somehow connected to
21 the idea that we sell something --

22 MR. ANNUNZIATA: All right.

23 THE WITNESS: -- so no.

24 BY MR. BEHREN:

25 Q Which you don't?

1 A No. So, what's your point?

2 Q Well, the point is, is that I don't know
3 whether -- did you -- here, let me mark this as -- we
4 are exhibit -- up to -- what are we up to?

5 A I.

6 MR. BEHREN: What was -- the brochure --

7 MR. ANNUNZIATA: J.

8 MR. BEHREN: -- I think was J, right?

9 THE WITNESS: J, yeah.

10 MR. ANNUNZIATA: K.

11 MR. BEHREN: So, Exhibit K --

12 THE WITNESS: Okay.

13 MR. BEHREN: -- is going to be your
14 responses to request for admissions,
15 interrogatories and requests for production.

16 (Deposition Exhibit K was marked for
17 identification.)

18 UNIDENTIFIED SPEAKER: What's -- what's this
19 new document?

20 MR. ANNUNZIATA: It's the -- it's the
21 objections -- applicant's objections and responses
22 to John Gerard Marino's first set of requests for
23 admissions, interrogatories, and request for
24 production, so it's the objections.

25 MR. BEHREN: Hold on one second. You can

1 take a look at that. My client wants to speak to
2 me for a second.

3 MR. ANNUNZIATA: They have stepped out for a
4 conference, Scott and Mr. Marino.

5 (A brief recess was taken.)

6 BY MR. BEHREN:

7 Q One other quick question before I forget.
8 Who is Vicki Rose?

9 A She's a --

10 UNIDENTIFIED SPEAKER: Are we on --

11 UNIDENTIFIED SPEAKER: Is that on the
12 record?

13 MR. BEHREN: We are on the record.

14 MR. ANNUNZIATA: We are back on the record.

15 UNIDENTIFIED SPEAKER: Okay. Sorry. I
16 just -- we just are having a hard time keeping
17 track.

18 MR. ANNUNZIATA: No, no, sorry about that.
19 We should have told you when everybody was back
20 in.

21 BY MR. BEHREN:

22 Q Who is Vicki Rose?

23 A She's a resident.

24 Q What knowledge does she have with regard to
25 the issues in this matter?

1 A Well, she -- I would imagine -- she is
2 someone who has lived there from the very beginning, so
3 she probably knows a lot of stuff; but what exact
4 knowledge she has, I have no idea.

5 Q So, you -- you don't know what she knows?
6 What about Jonathan Busa, who's that?

7 A He's a resident that lives in Laguna Lakes.
8 MR. ANNUNZIATA: What are you reading from?

9 BY MR. BEHREN:

10 Q What knowledge does he have?

11 MR. ANNUNZIATA: Are you reading from
12 answers?

13 UNIDENTIFIED SPEAKER: Objection.

14 MR. BEHREN: Not right now.

15 THE WITNESS: He was there from the very
16 beginning.

17 BY MR. BEHREN:

18 Q Okay. But do you have any -- you have no
19 knowledge as to what knowledge he --

20 A Specific --

21 (Off-the-record discussion.)

22 BY MR. BEHREN:

23 Q You don't have any knowledge?

24 A Specifically what he knows, no. I can't
25 speak for someone else.

1 Q And with regard to what I have marked as
2 Exhibit K, which are the objections and responses to
3 interrogatories, requests for admission, request for
4 production, you would agree at the end -- the second to
5 last page of that document there is your signature,
6 correct, as president of the LLCA Board of Directors --

7 A Yes, it is.

8 Q -- January 25th, 2013, right?

9 A That is my signature, yes.

10 Q So, that's the reason why I'm asking you
11 about -- such as number 41. It says, all documents
12 evidencing your use of Laguna Lakes and interstate
13 commerce since 2006. You would agree that, other than
14 residents potentially maybe buying units and moving from
15 out of state into Florida, that Laguna Lakes is not
16 engaged in interstate commerce, is it?

17 UNIDENTIFIED SPEAKER: Objection. The
18 verification relates to --

19 MR. BEHREN: Do not -- do not make speaking
20 objections, please.

21 UNIDENTIFIED SPEAKER: The document
22 production is not something that this witness
23 verified.

24 MR. BEHREN: Well, actually, he -- this
25 corporate representative was noticed as the person

1 with the most knowledge of the documents produced
2 responsive to the request for production, the
3 answers to the requests for admissions, and the
4 answers to the interrogatories.

5 BY MR. BEHREN:

6 Q So, my question is -- I asked for now in
7 paragraph -- in request for production number 41, I
8 asked for documents evidencing your use of Laguna Lakes
9 and interstate commerce since 2006.

10 UNIDENTIFIED SPEAKER: The objection stands,
11 but --

12 MR. BEHREN: Okay.

13 UNIDENTIFIED SPEAKER: -- Patrick, you can
14 answer, if you know.

15 THE WITNESS: All right. So number 41, all
16 documents, interstate commerce --

17 BY MR. BEHREN:

18 Q Other the website, you have none, correct?

19 A We -- yeah, the website, and -- I would say
20 the website and dealing with our residents in and out of
21 the state and the country.

22 Q Okay. But there is no documents relating to
23 dealing with residents in and out of the state and the
24 country, right?

25 A Well, I would imagine there's got to be a

1 way to pull stuff off the website that there's been
2 interactions, and I'm certain that we could pull phone
3 records, if necessary.

4 Q Okay. But the fact that the people -- that
5 people may buy units in Laguna Lakes from out of the
6 state or out of the country --

7 A Uh-huh.

8 Q -- doesn't mean that the association is
9 involved in interstate commerce, because the association
10 is not selling properties, correct?

11 A That's correct.

12 UNIDENTIFIED SPEAKER: Objection.

13 Go ahead, Patrick.

14 THE WITNESS: That is correct.

15 BY MR. BEHREN:

16 Q I also asked for all board of director's
17 meeting minutes for the LLCA since 2006, in request
18 number 40, and the only one I got was the one that I
19 asked you about before, which was Exhibit H. H? I keep
20 forgetting the exhibit letters.

21 A Hang on.

22 F.

23 Q F, that's the only one I got. So, you would
24 agree that there are a vast number of additional minute
25 meetings -- meetings of minutes that would have been

1 responsive to that request that were not produced,
2 correct?

3 UNIDENTIFIED SPEAKER: Objection.

4 BY MR. BEHREN:

5 Q Would that be correct?

6 UNIDENTIFIED SPEAKER: Go ahead, Patrick, if
7 you -- if you have any idea.

8 THE WITNESS: I need a better understanding
9 of --

10 MR. ANNUNZIATA: What --

11 THE WITNESS: -- that particular question.

12 MR. ANNUNZIATA: -- what number?

13 BY MR. BEHREN:

14 Q Request number 40. All board of director
15 meeting minutes for LLCA since 2006. You said you meet
16 at lease once a month, thereabouts?

17 A Thereabouts.

18 Q Okay. So, you would agree that since 2006,
19 there would be more than this one board of director's
20 meeting minutes --

21 A Yes.

22 Q -- marked as Exhibit F?

23 A I would agree that there would be more
24 meetings.

25 Q And any idea why they weren't produced to

1 me?

2 A No, I have no idea. It's not as --
3 something that I would know.

4 Q And 37, the request was all documents
5 evidencing annual sales and advertising figures for your
6 Laguna Lakes product since January 1, 2006. It says
7 you -- the response was you will produce non-privileged
8 documents. There -- there would not be any documents,
9 would there?

10 A I don't believe there would be.

11 Q Because, again, you all are not selling
12 anything?

13 A Right.

14 Q Do you do any advertising at all?

15 A Nope.

16 Q So, you also wouldn't have any documents
17 evidencing advertising expenditures, correct?

18 A That's correct.

19 Q So, once -- so, in 37, the response, I
20 guess, should be that you have no responsive documents?
21 Would that be correct?

22 UNIDENTIFIED SPEAKER: Objection.

23 MR. ANNUNZIATA: Objection.

24 UNIDENTIFIED SPEAKER: Patrick, to your
25 knowledge, go ahead.

1 THE WITNESS: I guess to my knowledge, that
2 would be correct. I have, you know --

3 BY MR. BEHREN:

4 Q So, also number 30, where we asked for
5 all -- any -- all agreements with any person who
6 develop, create, use, advertise, market, promote, or
7 sell products associated with Laguna Lakes, it says it
8 will produce all responsive documents. The -- I'm
9 assuming the response also there should be that there
10 are none?

11 UNIDENTIFIED SPEAKER: Objection.

12 If you -- but if you know, Patrick --

13 THE WITNESS: I -- I would say that there
14 are no documents.

15 BY MR. BEHREN:

16 Q With regard to 27, where I asked for all
17 documents pertaining to the creation, selection,
18 searching, adoption, earliest use, and decision to use
19 the Laguna Lakes mark, including correspondence with
20 design firms, advertising firms, advertising media, U.S.
21 and state governmental agencies, and intracompany
22 memoranda, the response was that we'll produce all
23 responsive non-privileged documents. Are there such
24 documents --

25 MR. HARDERS: Objection.

1 BY MR. BEHREN:

2 Q -- because I haven't gotten any yet?

3 MR. ANNUNZIATA: Did you object, Scott?

4 MR. HARDERS: Yes.

5 MR. ANNUNZIATA: Yeah.

6 And also, just for the record, there are
7 objections that are raised. Those objections are
8 not waived for the record, they were reiterated.

9 BY MR. BEHREN:

10 Q Again, sir, the question is, with -- it
11 would be a fair statement that Laguna Lakes did not --
12 these community associations did not select, or adopt,
13 or design the logo, or the name, or any of these
14 specimens that it's applying for trademarks on, did it?

15 A No.

16 UNIDENTIFIED SPEAKER: Objection.

17 But, to the extent that you know, Patrick --

18 THE WITNESS: To the extent that I know,
19 that no, they did not create it.

20 MR. BEHREN: Okay. So --

21 THE WITNESS: It came along with the
22 property.

23 BY MR. BEHREN:

24 Q So, you don't have any documents then to
25 show the creation, selection, searching, adoption, or

1 earliest use and decision to use the Laguna Lakes mark,
2 correct?

3 A I do not have that knowledge.

4 Q So, the response you believe to Exhibit 2,
5 request number 27, should also be no responsive
6 documents?

7 UNIDENTIFIED SPEAKER: Objection.

8 BY MR. BEHREN:

9 Q Would that be a fair statement, sir?

10 MR. ANNUNZIATA: Iterate all the objections
11 to each and every question that's been asked with
12 regard to each and every document, for the record.

13 THE WITNESS: You know, I -- I really -- to
14 my knowledge, I would say that we had, you know --
15 all of that came along with the property, so the
16 association itself probably did not pick any of
17 that out.

18 MR. BEHREN: Okay. Hold on one second.

19 (A brief recess was taken.)

20 BY MR. BEHREN:

21 Q All right. So, with regard to -- once the
22 Transeastern Laguna Lakes entity deeded the common areas
23 to Laguna Lakes Community Association, Inc., and we said
24 that was, I guess, in 2003, correct?

25 A Correct.

1 Q You would agree that from 2003 until
2 approximately 2006, Transeastern continued to market and
3 sell new homes in the Laguna Lakes development, using
4 the --

5 UNIDENTIFIED SPEAKER: Objection.

6 Q -- name and the logo, correct?

7 UNIDENTIFIED SPEAKER: Still objection.

8 But go ahead and answer, Patrick.

9 THE WITNESS: Yes. They had their marketing
10 all set up and they continued to use it.

11 BY MR. BEHREN:

12 Q So, they were the first users of the name
13 and logo, correct?

14 A They were also the first board members.

15 Q They were the owners --

16 A And the board members --

17 Q -- of the -- let me --

18 A Of the association.

19 Q Right.

20 They were the owners of the name and logo,
21 correct?

22 A Yeah.

23 Q Okay. So, the question is, where is there
24 documentation where they transferred ownership of the
25 name and logo to the Laguna Lakes Community Association?

1 A I couldn't tell you.

2 Q There isn't any, is there?

3 A I have no knowledge of anything like that.

4 Q Okay. Because, in fact, as you guys took
5 over, Transeastern continued to sell and market,
6 utilizing the name and the logo, right?

7 UNIDENTIFIED SPEAKER: Objection.

8 THE WITNESS: Right.

9 BY MR. BEHREN:

10 Q And they continued to own the domain name
11 and the website for Laguna Lakes, correct?

12 UNIDENTIFIED SPEAKER: Objection.

13 If you know, Patrick, it's okay.

14 THE WITNESS: I -- I don't know that they
15 ever owned the domain name, I don't know.

16 BY MR. BEHREN:

17 Q LagunaLakes.com?

18 A Right.

19 Q You don't know that?

20 A No.

21 Q Okay. Do you know whether or not then
22 Laguna Lakes -- whether or not Transeastern, when they
23 were merged with TOUSA, whether or not then they
24 transferred the domain name and the ownership of these
25 logos and names to TOUSA? Do you know that?

1 UNIDENTIFIED SPEAKER: Objection.

2 THE WITNESS: (Witness shrugging shoulders.)

3 BY MR. BEHREN:

4 Q You have no knowledge of that?

5 A I have no knowledge of that.

6 Q And it's your testimony the only reason why
7 the board of directors decided to file for these
8 trademarks was to protect the development from some
9 possible future contingency that might happen based upon
10 the conduct of Mr. Marino, correct?

11 A No, that is not what I said. I said
12 Mr. Marino and any other entity, business, or person
13 that would use the name and logo together to represent
14 themselves for the association, not being the
15 association. That's what I said.

16 Q You would agree that, to date, there is not
17 a single -- you have -- there -- you have no personal
18 knowledge of a single complaint about confusion between
19 Mr. Marino and the Laguna Lakes Community Association?

20 A No.

21 UNIDENTIFIED SPEAKER: Objection.

22 But you can answer, Patrick.

23 THE WITNESS: Not to me, no.

24 BY MR. BEHREN:

25 Q And, again, you don't -- and when --

1 although the -- although there was a transfer of the
2 Transeastern Laguna Lakes, LLC entity common areas to
3 the Laguna Lakes Community Association back in 2003, you
4 don't know specifically when these monument signs were
5 put up to the front of the development, correct?

6 A Specifically, no.

7 Q By the way, you -- so, you testified to --
8 about Mr. Marino using the LagunaLakes.com domain,
9 correct?

10 A I testified that he was using it?

11 Q Yeah, didn't you? I thought you said a
12 combination of him using the domain name and --

13 A Not the domain --

14 Q -- the logo was confusing.

15 A I never said the domain name.

16 Q Okay. So --

17 A I never said that.

18 Q All right. When you --

19 A What I said is, in the advertising, when
20 you're splashing the logo and the name Laguna Lakes
21 together and it comes across as if it's the association,
22 is where we have the problem.

23 Q Okay. So, it would be -- it would be a fair
24 statement then that if Mr. Marino has been using the
25 domain name LagunaLakes.com, that, to your knowledge,

1 there has been no complaints about anybody going onto
2 that website and being confused between Mr. Marino and
3 the association?

4 A There actually was one complaint, the
5 clubhouse manager, who he -- who told her he was going
6 to put her on there, and she declined.

7 Q He told who he was going to put who on
8 where?

9 A Mr. Marino told the clubhouse manager for
10 Laguna Lakes that he was going to put her on the
11 website, and she declined.

12 Q Okay. Who was that?

13 A Vanessa Metzger, the clubhouse manager.

14 Q Okay.

15 A Yes. She works --

16 Q So, he was trying to offer to put her on
17 there as a service, I guess, to the community, but she
18 didn't --

19 A No.

20 Q -- want to do it?

21 A It wasn't a service to the community, it's a
22 service to him.

23 Q Why?

24 A What do you mean why?

25 Q How is it a service to him to have the

1 clubhouse manager on the website, when he's trying to
2 sell real estate?

3 A Who -- how is that helping her out?

4 Q I said as a service to the community.

5 A Yeah, but how does that help her out? How
6 does that help the community out?

7 Q Because if --

8 A We already had -- because we -- see, when
9 you start to blur the line between Laguna Lakes
10 Community Association and Mr. Marino's business, then
11 that's a problem, and --

12 Q And what did he --

13 A -- that's exact --

14 Q What did he want the clubhouse manager on
15 the website for?

16 A I have no idea.

17 UNIDENTIFIED SPEAKER: Objection. How could
18 he know?

19 MR. BEHREN: Well, he -- it sounds like he
20 had a discussion with her about it.

21 THE WITNESS: I have no idea why he would
22 want her.

23 BY MR. BEHREN:

24 Q Okay. Did you ever discuss -- what did she
25 tell you about why it --

1 A She told me --

2 Q -- was that he wanted her on there?

3 A -- that he was -- he wanted to put her on
4 there. And I -- and I said, and? And she said, I
5 declined. That was the discussion.

6 Q Okay. So, there was never any information
7 about why it was he wanted to put her on there?

8 A No.

9 Q And you would agree, though, that, in all
10 likelihood, him listing a clubhouse manager on a site
11 that's used to sell real estate, it's not going to help
12 him sell real estate, right?

13 MR. ANNUNZIATA: Objection.

14 UNIDENTIFIED SPEAKER: Objection.

15 MR. ANNUNZIATA: Speculation.

16 BY MR. BEHREN:

17 Q Would you agree with that?

18 A No, I don't agree.

19 Q How do you think that listing the clubhouse
20 manager is going to help him sell real estate?

21 A You're asking me to --

22 MR. ANNUNZIATA: Objection.

23 A -- speculate. How -- you know, what I'm
24 telling you is, is that it's not going to help her
25 perform her job. She's being paid to do a job from

1 Alliant Property Management.

2 Q How would it hurt the community to have
3 Mr. -- to have this clubhouse manager on the website by
4 Mr. Marino?

5 UNIDENTIFIED SPEAKER: Objection.

6 THE WITNESS: How would it help?

7 BY MR. BEHREN:

8 Q If he wanted to put association contacts on
9 there, so that people would be able to communicate with
10 people within Laguna Lakes if they wanted to, how does
11 that hurt the association?

12 A He would have to contact the people in there
13 to have that question answered.

14 MR. BEHREN: All right. I don't have
15 anything further for him.

16 MR. ANNUNZIATA: We will -- we are going to
17 read, right, Scott?

18 MR. HARDERS: Yeah, we are going to read.
19 And a half hour for lunch?

20 (Deposition concluded.)

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DO NOT WRITE ON TRANSCRIPT - ENTER CHANGES

RE: Marino vs. Laguna Lakes

PAGE	LINE	CHANGE	REASON
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[illegible]

Under the penalties of perjury, I declare that I have read the foregoing document and that the facts stated in it are true.


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CERTIFICATE OF OATH

I, Marianne E. Sayers, RPR, CRR, Notary Public,
State of Florida at Large, certify that the witness
PATRICK TARDIFF personally appeared before me on August
23, 2013 and was/were duly sworn.

(This certificate has been digitally signed.)



Marianne E. Sayers, RPR, CRR,
Notary Public, State of Florida
Commission DD942088
Commission Expires 1/19/2014

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CERTIFICATE OF REPORTER

STATE OF FLORIDA)

COUNTY OF LEE)

I, Marianne E. Sayers, RPR, CRR, do hereby certify that I was authorized to and did stenographically report the deposition of PATRICK TARDIFF; that a review of the transcript was requested; and that the transcript is a true and complete record of my stenographic notes.

I FURTHER CERTIFY that I am not a relative, employee, or attorney, or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED this 9th day of September, 2013.

(This certificate has been digitally signed.)


Marianne E. Sayers, RPR, CRR